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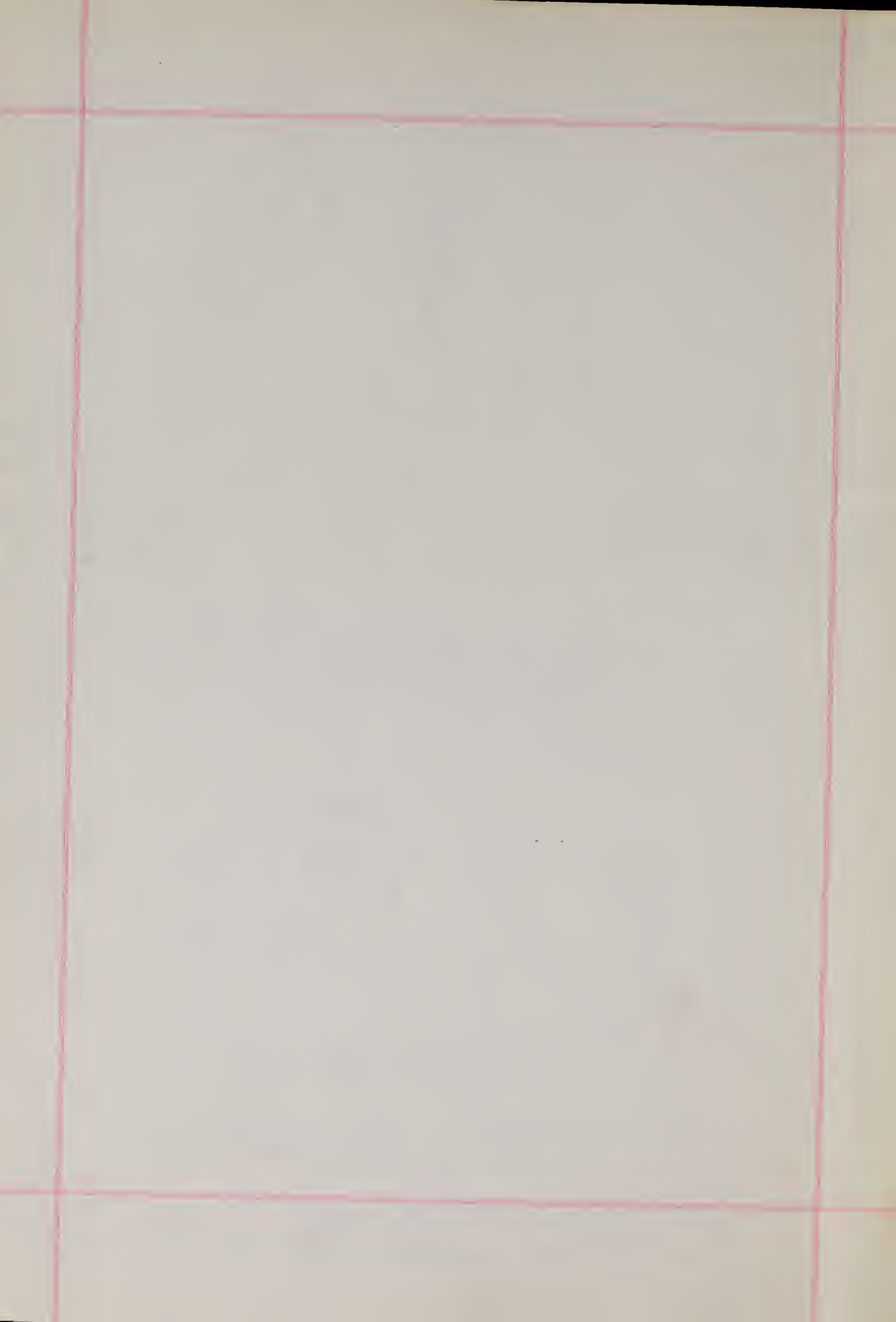
GRADUATE SCHOOL

Thesis

ADMINISTRATIVE CONTROLS AND PROBLEMS  
IN  
UNITED STATES TARIFF POLICY

by  
Joseph Patrick Bane  
(B.S., Boston College, 1943)  
submitted in partial fulfillment of the  
requirements for the degree of  
Master of Arts  
1947

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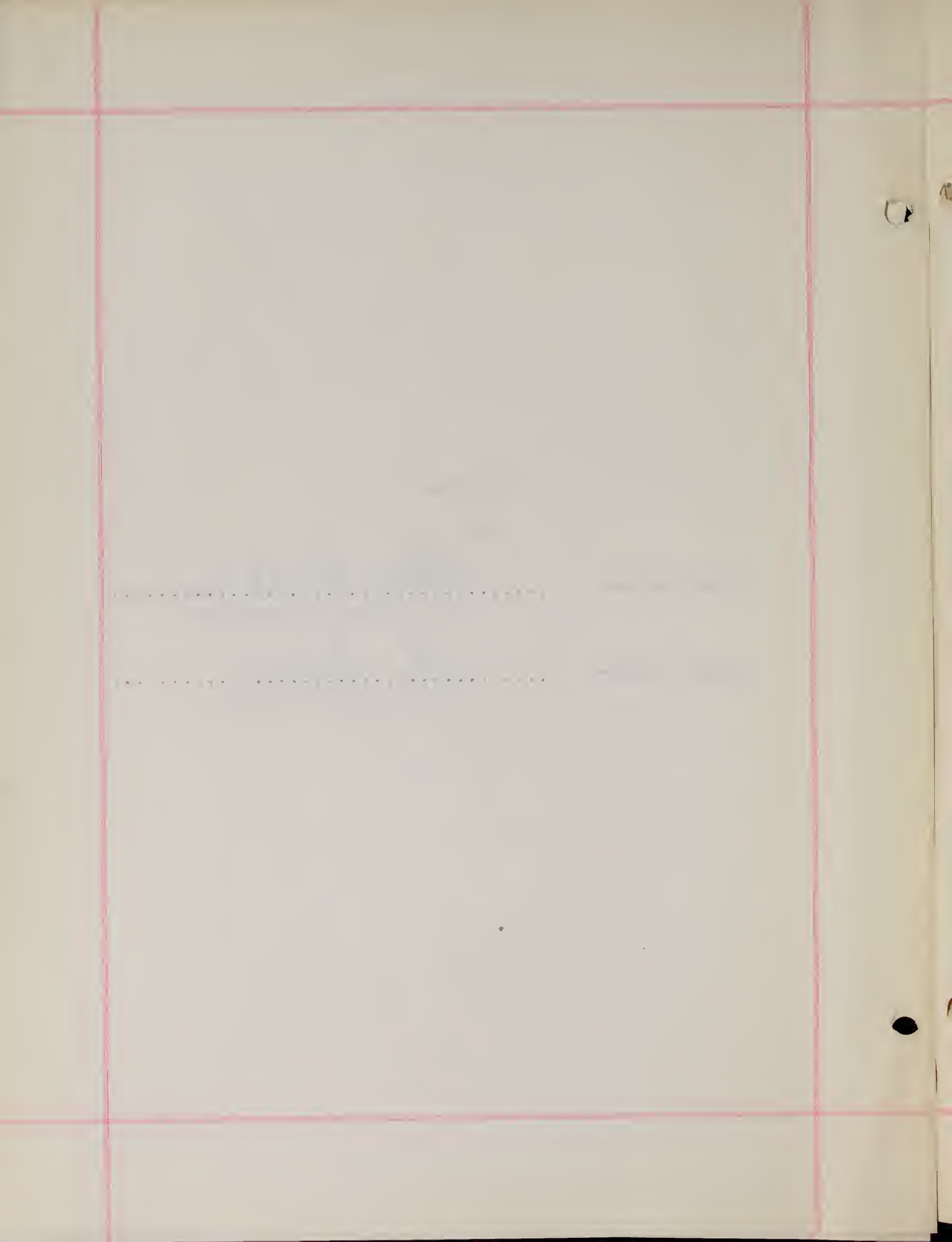
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## CHAPTER I

### THE PROBLEM AND DEFINITIONS OF TERMS USED

#### Introduction:

The Constitution of the United States makes no specific provision for administrative legislation, nor for the administrative determination of particular government policies. Fundamentally, national and state government in the United States rests upon the basis of coordinated departments created by the Constitution. Theoretically, the functions of the legislative, executive, and judicial departments of a government are capable of separation and under a simple governmental regime there are not too many occasions to put the theory of separation to a practical test. Administration takes an added importance as government enlarges the field of its regulatory powers over the property and affairs of private persons. In recent years the development of this regulatory process has progressed at a rapid pace with new emphasis upon the coordination of governmental action through administrative bodies, at the expense of the traditional separation of powers doctrine.

Indicative of this trend towards administrative

Article

THE STATE OF NEW YORK

(Continued)

It is the duty of the State to provide for the education of all its children, and to maintain a system of public schools which shall be free and open to all, and which shall be conducted in accordance with the highest standards of efficiency and economy.

The State shall also provide for the education of the deaf, blind and feeble-minded, and for the education of the children of the poor, and for the education of the children of the colored race.

The State shall also provide for the education of the children of the poor, and for the education of the children of the colored race, and for the education of the children of the poor, and for the education of the children of the colored race.

The State shall also provide for the education of the children of the poor, and for the education of the children of the colored race, and for the education of the children of the poor, and for the education of the children of the colored race.

The State shall also provide for the education of the children of the poor, and for the education of the children of the colored race, and for the education of the children of the poor, and for the education of the children of the colored race.

The State shall also provide for the education of the children of the poor, and for the education of the children of the colored race, and for the education of the children of the poor, and for the education of the children of the colored race.



regulation in economic matters was the short lived National Recovery Administration, as well as the Agricultural Adjustment Administration, both of which were created in response to an overwhelming demand from many quarters that certain elements in the making of economic and industrial policy should no longer be left to the market place and its flexible price mechanism but should be placed in the hands of administrative bodies, code authorities, crop control committees, etc. This trend in the last two decades is not only a product of emergency conditions, but is also a reflection of more basic dissatisfaction with the results of laissez-faire, such as are reflected in the trends towards more powerful labor unions, in increasing aid for farmers and for such economic organizations as will bring the higher standard of living made possible by modern technology.

Evidence of this twentieth century movement in the direction of more administrative regulation has not been lacking as far as United States Tariff Policy is concerned. During the Congressional hearings and debates preceding the passage of the Hawley Smoot Tariff Act of 1930, a prominent protectionist asserted that the low tariff advocates make whatever tariff rates they wished



provided they would leave the writing of the administrative provisions of the law to the protectionists. The main body of this study is an attempt to substantiate the meaning and wisdom behind this last statement.

#### STATEMENT OF THE PROBLEM

It is the purpose of this study:

1) to trace the origin and development of administrative regulation in United States Tariff Policy,

2) to evaluate the growth of the President's power over tariff matters in the light of the principle of the delegation of legislative authority,

3) to indicate the failure of the vague flexible provisions (section 315 - Tariff Act of 1922) as a practical solution to the tariff problem and the resultant maze of administrative provisions and problems, the application of which was largely dependent upon the elastic interpretation of the tariff administrators.

The three fold purpose of this treatise falls into two stages. The first has to do with the collection and presentation of tariff information by an administrative Commission. The second stage commences with the enactment of the so-called scientific or flexible provisions as a part of the Tariff Act of 1922. It is under this latter division that the problems inherent in the United





States Tariff Commission's attempt to equate "differences in cost of production" are discussed.

#### DEFINITIONS OF TERMS USED

Administrative: The term administrative pertains to the act of administering something. In this particular study the word refers to the action of the state in the exercise of its political powers. More specifically, it implies the action of the executive alone, or of the executive in managing the property and business transactions of the state and in providing for the general welfare.

Controls: Throughout this study the term control(s) shall be interpreted as the power or authority of an administrator or administrative body to rule, govern, guide, direct, restrain, or influence United States Tariff Policy.

Problems: The term problem(s) as utilized principally in Chapter V has particular reference to the questions that have arisen from the attempt at the practical application of the nebulous terminology of the flexible provisions, particularly Section 315 (c) of the Tariff Act of 1922.

United States Tariff Policy: The words tariff policy are to be interpreted as the procedure or chosen





course adopted by a government (in this case the United States) in managing its tariff affairs. Depending upon the objective to be achieved by a particular nation, such as nationalism, imperialism, or freer trade, the government of the nation in question will invariably select a tariff policy that will coincide with and contribute something to the overall end in view.

#### IMPORTANCE OF THE STUDY

An enlightened citizenry has a vital interest in the tariff issue. Under a democratic form of government, the people's representatives in Congress determine whether tariffs are to be imposed at all on imports from foreign countries; if so, the principle to be used in fixing the rates of duty; whether export subsidies are to be granted; whether trade is to be quantitatively restricted by prohibitions, quotas, or exchange controls; whether in commercial dealings we are to ask and give equality of treatment; whether there is to be sufficient flexibility in the administration of the tariff to permit reciprocal arrangements with foreign states.

The right of deciding upon and defining the above mentioned policies belongs to the people under a democracy. And the reason is obvious. The tariff affects practically every phase of our economic life. Con-



sidered from the standpoint of revenue, it becomes a fiscal problem and raises many questions of public finance. Viewed from the standpoint of the producer, it becomes an industrial problem and requires a careful analysis of all the factors which relate to the actual and potential competitive strength of our diversified industries. Considered from the standpoint of the consumer, it raises questions of the incidence of taxation, of the cost of living, and of distribution. Viewed from the standpoint of our foreign relations, it presents some of the most complex and difficult questions in the field of international commercial policy.

Since the beginning of the twentieth century, the development of administrative regulation in our government system has resulted in the gradual diminishing of the power of Congress to determine many of the above listed tariff policies. An intelligent citizenry should be interested in the basic reasons behind such a movement.

One of the primary causes has been the delegation of legislative authority over tariff matters to the executive branch of the government. There still exist in many informed circles differences of opinion as to the violation of constitutional principles involved in







such a situation. In many respects this treatise attempts to convey the consequences of such liberal legal support.

Another reason for the trend toward administrative control of our present tariff policy has been the supposedly scientific "cost of production formula" about which there has been much criticism of a constructive as well as a destructive nature.

The need, therefore, of this study is an attempt to clarify and analyze in my own mind, as well as in others, the origin, development, practical application, and accomplishments of the administrative regulation of the United States Tariff Policy.

THE UNIVERSITY OF CHICAGO  
DIVISION OF THE PHYSICAL SCIENCES  
DEPARTMENT OF CHEMISTRY

REPORT OF THE  
COMMISSION ON THE  
STRUCTURE OF THE  
ATOMIC NUCLEUS  
AND THE  
PROPERTIES OF THE  
NUCLEAR FORCES  
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## CHAPTER II

### BRIEF HISTORY OF UNITED STATES TRADE POLICIES

There never has been a time in the history of this country when foreign trade has not played a part in the economic life of the people. During the colonial era an extensive trade was maintained by the mother countries with their American colonies. Colonies were designed to provide at once sources of raw materials and outlets for the manufactured products of the mother country.

The steady growth of the foreign trade of the United States represents an interesting contrast with our changing commercial trade policies. Beginning as colonies which were established under the restrictive mercantilistic policy of the seventeenth and eighteenth centuries, we came gradually to resent interference with our commerce. In fact, modern historians claim that the attempted enforcement of the Navigation Acts was the chief cause of the Revolution. This would seem to have set the stage for unrestricted world trade. The new nation, however, was faced with the necessity for raising revenue and hence imposed import duties which were in part protective to certain American industries, especially the merchant marine. Protection of infant

## THE HISTORY

### OF THE CITY OF BOSTON

FROM THE FIRST SETTLEMENT OF THE  
INDIANS TO THE PRESENT TIME  
BY  
JOHN H. COLEMAN, ESQ.  
OF THE CITY OF BOSTON.  
PUBLISHED BY  
JOHN H. COLEMAN, ESQ.  
OF THE CITY OF BOSTON.  
1850.

THE HISTORY OF THE CITY OF BOSTON, FROM THE FIRST SETTLEMENT OF THE INDIANS TO THE PRESENT TIME, BY JOHN H. COLEMAN, ESQ., OF THE CITY OF BOSTON. PUBLISHED BY JOHN H. COLEMAN, ESQ., OF THE CITY OF BOSTON. 1850.



industries soon became a part of American commercial policy under the leadership of Hamilton and the stimulus of the industrial revolution. There were shifts in emphasis, however, from higher to lower tariffs as the old persistent mercantilistic theories waxed or waned, although the restrictive policy of higher tariff gained ground. Through it all our foreign trade continued to expand as we gradually pushed back the frontier. The point to remember is that as we grew rich and powerful our foreign trade grew also, reaching the imposing peace time total of over nine and one-half billions in 1929, and this happened despite an overall protective policy which was well designed to curb it. With fluctuating economic conditions ever present, our country's economic policy in trade matters was readily capable of adapting itself in order to achieve maximum benefits from the world situation. Thus the body of this chapter is a brief historical and definitive account of the evolution of some of the more important trade policies either past or presently adopted by our government.

#### MOST FAVORED NATION CLAUSE

A most-favored-nation clause is "a clause inserted in most modern commercial treaties providing that each





party to the treaty extends to the other any favor or concession granted to a third state."<sup>1</sup>

In the use of the most favored nation clause different nations have adopted different views and practices. European nations have generally employed the so called unconditional form according to which concessions or favors granted to any third State by one party to the treaty are automatically extended to the other. It has been the American practice, however, to make a distinction between kinds of concessions that may be granted; namely, "concessions freely made," or concessions dependent upon some reciprocal favor. In the case of free concessions the European practice is omitted, but in the latter case where a favor is granted to a third State in exchange for an equivalent, it is held that the other party to a most favored nation treaty is entitled to the same favor only after making a compensation equal to that given by the third State. Where this latter qualifying condition is expressly stipulated in the treaty, the clause is spoken of as "conditional."

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1. Dictionary of Tariff Information, United States Tariff Commission, Washington, Government Printing Office, 1924, p. 489.



The most favored nation clause appeared in a primitive form in the twelfth and thirteenth centuries in the treaties concluded by the Arabian princes with the commercial cities of Spain, France and Italy. As these treaties and the concessions therein with various cities multiplied, it became customary for each municipality concerned to demand as advantageous a treatment as was accorded the most favored of the others.

It is in the seventeenth century that the clause takes on its modern form. At that time, following the breaking up of a number of national or city monopolies such as those of Spain, Portugal, the Hanseatic League, and the Italian cities, there was a wider development of international commercial relations, carrying with it the negotiation of numerous treaties. As each nation sought to acquire the privileges accorded others, it became customary in treaties to avoid the enumeration of numerous previous concessions by simply extending these concessions in a blanket clause - that of the most favored nation. The clause at this time applied only to concessions already made. Concessions subsequently granted to third countries did not automatically apply to the favored country.

A new phase appeared in the most favored nation







system with the advent of the United States among the nations. This country found the previously prevailing form of this concession contrary to its national interests and granted only conditional most favored nation treatment as defined above. This position was first taken in the treaty with France in 1778. That treaty was followed by a number of others in which the formula adopted in the treaty was regularly repeated. As a matter of fact, it was until 1922 that the conditional form of the most-favored-nation clause was maintained in American treaties. Changing conditions in our national life were in that year recognized by the Republican-controlled Congress. This Congress wrote into Section 317 of the Tariff Act of 1922 the principle of equality of commercial treatment - the principle that we should ask equality of treatment from foreign nations and that we should grant to them equality of treatment in our market.

At the time, Secretary of State Hughes seized upon this declaration of policy and embodied it in our commercial treaty structure. A confidential circular signed by Mr. Hughes and dated August 18, 1923, was sent to American diplomats throughout the world. It began, "The Department desires to inform you confidentially and for such comment as you may care to make that the President has authorized the Secretary of State to



negotiate commercial treaties with other countries by which the contracting parties will accord to each other unconditional most-favored-nation treatment."<sup>2</sup>

With the exception of the Cuban agreement this policy was continued and extended in our treaty structure by Mr. Kellogg and Mr. Stimson when they were in charge of the Department of State.

While opponents of it obviously do not realize the disturbing effect which attempts to return to the conditional principle would have upon our foreign relations, former Secretary of State Cordell Hull and the other framers of the Trade Agreements Act realized too well the long run effects of the policy when they wrote the unconditional principle into the act.

#### EXECUTIVE AGREEMENTS

"The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations."<sup>3</sup> These words of John Marshall, spoken

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2. William S. Culbertson, Reciprocity, New York (McGraw Hill Book Company, 1937), p. 170.

3. Edward S. Corwin, The President, Office and Powers (New York University Press, 1941), p. 208.





in 1799, state what has today become commonplace, which is the reason perhaps why their precise significance has been so rarely considered. Clearly, what Marshall had foremost in mind was simply the President's role as an "instrument of communication" with other governments.

Paragraph 2 of section 2 of Article of the Constitution ordains that the President "shall have power by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senate present concur."

Taken literally, the word "make" associates the President and Senate throughout the entire process of making a treaty, from prior to the initiation of negotiations to the final ratification of the document. Such consultation of the Senate as takes place today respecting a treaty prior to its formal submission is usually informal and via selected members of the Foreign Relations Committee, the creation of which in 1816 as a standing committee was tacit recognition that the preliminary processes of treaty making had come to be segregated to the President, as in fact the actual initiative had been from the first. So far as practice and weight of opinion can settle the meaning of the Constitution, it is today established that the President





alone has the power to negotiate treaties with foreign governments; that he is free to ignore any advice tendered him by the Senate as to a negotiation; and that he is final judge of what information he shall entrust to the Senate as to our relations with other governments.<sup>4</sup>

The Senate role in treaty making, therefore, ordinarily comprises nowadays simply the power of saying whether a proposed treaty shall be ratified or not - the act of ratification being the President's.

Instances of "treaty making" by the President without the aid and consent of either Congress or the Senate are quite numerous in our history. One was the exchange of notes in 1817 between the British Minister Bagot and Secretary of State Rush for the limitation of Naval forces on the Great Lakes. Not till a year later was it submitted to the Senate, which promptly ratified it. Of like character was the exchange of notes between the State Department and various European governments in 1899 and 1900 with reference to the "Open Door" in China; the exchange in 1908 of so-called "identic notes" with Japan concerning the maintenance of the integrity of China; the "gentlemen's agreement" first drawn in

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4. Ibid., pp 233-234.



1907, by which Japanese immigration to this country was long regulated; the "modus vivendi" by which after the termination of the Treaty of Washington in 1885 American fishing rights off the coast of Canada and Newfoundland were defined for more than a quarter of a century; the protocol for ending the Boxer Rebellion in 1901; the notorious Lansing-Ishii agreement of November 2, 1917, recognizing Japan to have "special rights" in China; the armistice of November 11, 1918 - to say nothing of the entire complexus of conventions and understandings by which our relations with our "Associates" in the World War were determined, nor yet of the considerable series of agreements under which Presidents have at times employed the Army and Navy in the supervision of elections<sup>5</sup> in certain of the Carribbean countries.

That such agreements are "treaties," in the sense at least that they might have been submitted to the Senate for it to pass upon, is clear. The Rush-Bagot Convention is a case directly in point, and a parallel to it is the agreement which the first Roosevelt entered into with Santo Domingo ninety years later for putting the customs houses of that bankrupt nation under American

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5. Ibid.







control, in order to forestall its European creditors attempting the same thing. The story is told by Mr. Theodore Roosevelt in his Autobiography as follows:

"The Constitution did not explicitly give me power to bring about the necessary agreement with Santo Domingo. But the Constitution did not forbid my doing what I did. I put the agreement into effect, and I continued its execution for two years before the Senate acted; and I would have continued it until the end of my term, if necessary, without any action by Congress. But it was preferable that there should be action by Congress, so that we might be proceeding under a treaty which was the law of the land and not merely a direction of the Chief Executive which would lapse when that particular Executive left office. I therefore did my best to get the Senate to ratify what I had done. The Senate adjourned without any action at all; and with the feeling of entire self-satisfaction at having left the country in the position of assuming a responsibility and then failing to fulfil it. Apparently the Senators in question felt that in some way they had upheld their dignity. All that they had really done was to shirk their duty. Somebody had to do that duty, and accordingly I did it. I went ahead and administered the proposed treaty anyhow, considering it as a simple agreement on the part of the Executive which would be converted into a treaty whenever the Senate acted. After a couple of years the Senate did act, having previously made some utterly unimportant changes which I ratified and persuaded Santo Domingo to ratify. In all its history Santo Domingo has had nothing happen to it as fortunate as this treaty and the passing of it saved the United States from having to face serious difficulties with one or more foreign powers." 6

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6. Ibid., pp 237-238.



In short, the substantial difference between a "treaty" and Presidential or "Executive Agreements" is to be found in the fact that the former is ratified by the Senate. It has been contended that such "Executive Agreements" bind only the administration entering into them and the former contention is refuted by history, the latter by decision of the Supreme Court. Of these, *United States v. Belmont*, decided in May 1937, is the most recent. The validity of such "Executive Agreements" is not open to serious doubt today because of the above mentioned and other repeated decisions of the Courts.

#### RECIPROCITY

"Reciprocity, as the term is commonly understood in the United States, means a mutual exchange of tariff concessions, with the understanding that these concessions are not to be extended generally and freely to other nations."<sup>7</sup>

Chester A. Arthur, twenty-first President of the United States, was the author of what is known as the Reciprocity policy for promoting the export trade of the United States.

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7. Dictionary of Tariff Information, United States Tariff Commission, Government Printing Office, Washington, D.C., 1924, p. 56.





However, a reciprocity treaty with Canada was negotiated by William L. Marcy and Lord Elgin in 1854, and was effective from March 16, 1855, until March 16, 1865; but it was unsatisfactory to both countries because it did not go far enough. It provided for a free interchange between the two countries of natural products from the farm, the sea and mine, but included no manufactured products, which were not produced to any extent in Canada and were still heavily taxed. Also, it did not admit Canadian vessels to the American coasting trade.<sup>8</sup>

During the eleven years of the reciprocity period, the total trade between the two countries increased approximately threefold, and for the United States the trade with Canada became second only to that with Great Britain.

The main courses which brought about the abrogation of the treaty were the adoption of protectionist principles and practices in Canada, the resentment aroused in the United States by the attitude of Canada during the Civil War, and the need of increased revenues by both countries.

For thirty years afterward, efforts on the part of

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8. Annals of the American Academy of Political and Social Science, May 1907, Vol. XXIX, No. 3 "Development of the Foreign Trade of the United States" p. 15.

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Canada to seek reciprocity treaties met with no success. The result being that Canadian public sentiment was aroused toward a "National," self-sufficiency policy and reciprocity was not again attempted until 1910.

In 1910-11, another attempt was made to have reciprocal trade treatment with Canada. Negotiations were carried on to arrive at duty reductions and changes in general tariff rates as they applied to various products. Eventually a treaty was arrived at, passed by the United States Legislature, and became an Act on the Statute books of the United States. However, Parliament in Canada failed to pass on the treaty. Therefore it failed to be put into effect.

In 1875 a reciprocity treaty was concluded between Hawaii and the United States. It is agreed that economically, the Hawaiian Treaty was unprofitable to the United States. Nevertheless, when the Treaty was concluded after being in operation for twenty years, it was recognized that the political benefits far outweighed the commercial ones.

Since the McKinley Tariff Act of 1890 provided for the imposition of penalty duties upon imports from countries which discriminated in their tariff treatment against goods from the United States, it is considered to be the first authorization ever given by Congress for





a comprehensive program of tariff bargaining.

Congress aimed by this Act to secure more favorable trade relations with other countries by penalizing such countries as did not treat American products favorably rather than by following the method which had been favored by the Administration -- that of remitting or lowering duties on the products of countries which in return would make similar tariff concessions. The Act gave the President, within prescribed limits, a free hand in negotiations.

Under the terms of this Act, Secretary of State Blaine began the negotiation of a series of agreements. Between January 31, 1891, and May 26, 1892, ten reciprocity arrangements were concluded. In most cases, the other contracting party agreed to admit free, or at substantially reduced tariff rates, the bulk of its imports from the United States.

During the period of these reciprocity treaties penalties were fairly effective, both as measures of retaliation and as a means of securing tariff concessions. Exports from the United States to the reciprocity countries showed a substantial increase.

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9. Reciprocity and Commercial Treaties - United States  
Tariff Commission, Government Printing Office,  
Washington, 1919.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1801.

2. The second part is a report from the Secretary of the Navy, dated January 1, 1801, containing a list of the ships of the Navy and the names of the officers and crew.

3. The third part is a report from the Secretary of the Treasury, dated January 1, 1801, containing a list of the public debt and the names of the holders.

4. The fourth part is a report from the Secretary of the War, dated January 1, 1801, containing a list of the troops and the names of the officers and crew.

5. The fifth part is a report from the Secretary of the Interior, dated January 1, 1801, containing a list of the lands and the names of the owners.

6. The sixth part is a report from the Secretary of the State, dated January 1, 1801, containing a list of the foreign relations and the names of the ministers.

7. The seventh part is a report from the Secretary of the Marine, dated January 1, 1801, containing a list of the ships and the names of the officers and crew.

8. The eighth part is a report from the Secretary of the Ordnance, dated January 1, 1801, containing a list of the arms and the names of the makers.

9. The ninth part is a report from the Secretary of the Mint, dated January 1, 1801, containing a list of the coins and the names of the makers.

In 1894, the Democratic administration passed a tariff act which did away with the reciprocity provision of the McKinley Act. However, in 1896, with the incoming of the Republican Party, there came a Tariff Act which again provided for negotiation of reciprocity treaties.

President McKinley appointed John A. Kasson, of Iowa, as special commissioner to be assisted by a "reciprocity commission" for the negotiation of agreements under the Act.

Two series of agreements known as the "argol agreements" were concluded; the first agreements were with France, Portugal, Germany and Italy, whereas the second series were negotiated during the first Roosevelt's administration.

In December 1899, the Kasson treaties were presented for ratification, but failed to be ratified. In 1909, the Tariff Act provided giving to all countries, other than Cuba, notice of their reciprocity agreements with the United States.

A treaty of much importance was that made with Cuba in 1902. The bill provided for a reduction of 20 percent from the American duties on civilian imports and reduction of from 20 to 40 percent from the Cuban rates on American products.





This treaty was independent of the reciprocal provisions of the Act of 1897, and was not connected with the treaties negotiated under that Act. It contained the provision that the reduction in duty specified should not be extended to any other country, that during the continuance of the treaty no Cuban sugar should be admitted to the United States at a rate of duty lower than that provided by the Act of 1897. The fact must not be overlooked that increases in trade with Cuba have been due not only to the treaty of 1902, but also in considerable part to the favorable influence upon Cuba of the reconstruction program carried out under the assurance of law and order guaranteed by the treaty of 1903. The close political relations between the United States and Cuba, the investment of American capital, the development in the United States of large scale export trade in manufactures, and the settlement in Cuba of Americans -- these and other factors have operated along with the tariff preference to increase the trade between the two countries.

Summing up the reciprocity background of the United States we can conclude that the reciprocity experience under the Tariff Acts of 1890 and 1897 taught us certain things to avoid. Each of the three methods contained or developed defects. Experiences with penalty or addi-



tional duties under the Act of 1890 revealed that this method alone was not adequate and it was supplemented in the Act of 1897 by the concessional method without abandoning the penalty method. The argol agreements were satisfactory so far as they went, but they showed that no adequate policy can be built on a small list of non-competitive products, and no long and important list of non-competitive articles can be formed. Then the failure of the Kasson Treaties demonstrated the futility of a reciprocity policy which provides that Congress shall debate each agreement.

The success of reciprocity under the Acts of 1890 and 1897 was limited by the negative and confining effect of the conditional most-favored-nation clause in our commercial treaty structure. The evil effects of this policy were corrected by the adoption in 1922 and expansion under the Reciprocal Trade Agreements Act of 1934 of the unconditional most-favored-national principle.

In spite of the defects, however, the Tariff Acts of 1890 and 1897 moved reciprocity into a position of national policy.

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10. Reciprocity - A National Policy for Foreign Trade, by William S. Culbertson, published by McGraw-Hill Book Co.Inc., Whittlesey House, 1937, p. 162.





We have come along from these pioneering days through the conditional most-favored-nation clause to the unconditional most-favored-nation principle, slowly incorporating the principle of reciprocity into our national policy. By careful and patient planning, we are now trying to undo much of the harm of retaliatory measures which resulted from our Hawley-Smoot Tariff, by taking the initial step in negotiating treaties under our Reciprocal Trade Agreements Act of 1934.

#### RETALIATION

In his message to Congress of December 4, 1883, President Arthur also introduced the plausibility of retaliation when he requested that Congress "provide some measure of equitable retaliation in our relations with governments which discriminate against our own."<sup>11</sup> The desired measures were not forthcoming, however, until the passage of the Tariff Act of 1890 which provided that penalty duties were to be imposed upon imports from countries whose duties on American products were, in the opinion of the President, "unequal and unreasonable." The section stipulated only five articles of which the

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11. John Day Larkin, The President's Control of the Tariff (Harvard University Press, 1936), p. 48.



majority of the exports of the listed items originated amongst the Latin American countries. On the whole, various Latin American countries resented the offensive nature of the penalizing principle and the outcome was a feeling of ill-will mixed with reprisals against American made goods.

In 1884 the Democratic administration rectified the unhappy situation somewhat when it did not include the section having to do with retaliation in the Wilson Act. However, when the Republican Party regained control of Congress in 1896, they not only restored the retaliation concept in the Dingley Act of 1897, but augmented the President's control over treaty negotiations by the addition of the special "argol agreements"<sup>12</sup> as well as more<sup>13</sup> general reciprocity powers.

The President was empowered by Section 3 of the Dingley Act to reduce tariff duties without the consent of Congress on a specified list of argols, brandies, sparkling and still wines, paintings and stationery after arranging for favorable advantages from the countries producing such items. Under Section 4 of the Act

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12. Section 3, Tariff Act of 1897.

13. Section 4, Tariff Act of 1897.

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of 1897 the President was authorized to:

- (a) make five year treaties,
- (b) promise a reduction of 20% in tariff rates for imports originating in a country making compensating concessions,
- (c) if goods exported from an agreement country were not produced in the United States they could be put on the free list.

Treaties negotiated under the conditions of Section 4 were unlike Section 3 in that they required the normal ratification by two-thirds of the Senate, as well as the approval of the House.

For the negotiation of agreements under the Act, we noted previously in this chapter (under "Reciprocity") that President McKinley appointed a "Reciprocity Commission" under the direction of Mr. John A. Kasson. The results achieved by the operation of the argol provisions were highly successful. A long list of agreements were signed with France, Portugal, Italy, Germany, and Switzerland, whereby duties on American exports were reduced for similar reductions on items in the argol list. A second list of argol agreements were negotiated during the Roosevelt Administration (1901-1909); they lasted until the passage of the Payne Aldrich Tariff Act of 1909.

As for the group of treaties negotiated under the provisions of Section 4, which were to grant a 20% reduction in the tariff duties of the United States in return



for equal concessions from foreign nations - they failed to be ratified by Congress.

The retaliatory principle was continued in the Tariff Act of 1909. With the inclusion of the "maximum and minimum" provision, the former schedule of rates could be used to penalize foreign countries that discriminated against United States exports; whereas the latter schedule of rates was high enough to provide normal protection to American products.

Contemporary use of the retaliatory principle is to be found in section 317 of the Tariff Act of 1922 and repeated in section 338 of the Tariff Act of 1930. These sections authorize the President to penalize with additional duties or by means of an embargo the goods coming from a foreign nation which "discriminate in fact against the commerce of the United States." The general interpretation of the words "in fact" is the existence of a special arrangement between two countries providing lower tariff duties to each other than the United States enjoys with either of them. In other words, the President is empowered to penalize American destined exports from nations which have concluded a reciprocal arrangement or most-favored-nation agreement to the exclusion of the United States.

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The inconsistency of our present retaliatory policy is rather obvious. We, as a nation, claim that we will definitely not tolerate but will penalize exclusive agreements between two foreign nations; nevertheless, we openly continue our conditional most-favored-nation agreement with Cuba. Under the Reciprocal Trade Agreements Program of 1934 we have assumed an unconditional most-favored-nation policy without entirely eliminating<sup>14</sup> all traces of our previous conditional trading policy. The retaliatory powers vested in the President manifest the possession of a high degree of administrative power.

Successive Presidents since 1922 have seemed to recognize the inherent difficulties and inconsistencies in the retaliatory policy; therefore they have been extremely cautious in exercising their discretion under sections 317 and 338 of the two most recent tariff laws.

The purpose of reciprocity may be to develop foreign markets for the products of a country, to promote closer political relations, to assist weaker economic units, or it may be a combination of all these ends. On the other hand our reciprocity agreement with Cuba is a special arrangement which is, in the long run, generally

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14. For definition of terms see section on Most Favored Nation clause (Chapter II).



undesirable for the reason that it tends to discriminate against third countries.





## CHAPTER III

ORIGIN AND DEVELOPMENT OF THE  
UNITED STATES TARIFF COMMISSION

REVENUE COMMISSION OF 1865

As early as 1865 Congress solicited the assistance of an outside administrative body in formulating tariff legislation. The desperate need of funds to continue the prosecution of the Civil War necessitated the Act of March 3, 1865, which provided that:

"The Secretary of the Treasury is hereby authorized to appoint a Commission, consisting of three persons to inquire and report at the earliest practicable moment upon the subject of raising by taxation such revenue as may be necessary in order to supply the wants of the government, having regard to and including the sources from which such revenue should be drawn and the best and most efficient mode of raising the same, and to report the form in a bill." 1

Following the termination of the Civil War, the function of the three-man Revenue Commission was changed to that of an advisory Commission concerned with modification in the existing Tariff and Internal Revenue Laws. Many recommendations of the Commission were adopted by the Committee of Ways and Means in the bills submitted to the thirty-ninth Congress. Subsequently, the Secretary of the Treasury was empowered by the Act of July 13,

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1. 13 United States Statutes at Large 487.

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1866, to appoint a special Commissioner of Revenue to hold office to the close of the fiscal year 1869-1870.

The Commissioner selected was a Mr. David A Wells, who had been Chairman of the Revenue Commission of 1865. Wells "executed his commission with conscientious faithfulness and industry and collected a large amount of valuable data;"<sup>2</sup> but he advocated a policy of free trade at a time when the controlling opinion was bent towards protection. A different authority on the subject criticized the Commissioner's reports by stating that they were "characterized by passionate partisanship and a controversial spirit unbecoming a public officer."<sup>3</sup> Undoubtedly Mr. D. A. Wells' influence "brought the Commission's expert service into disrepute,"<sup>4</sup> for it wasn't until 1882, eighteen years later, that another attempt was made with a Commission.

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2. Andrew C. McLaughlin and Albert H. Bushnell, Cyclopedia of American Government (New York and London: D. Appleton and Co. 1914) III, p. 472.
  3. Edward A. Stanwood, American Tariff Controversies in the Nineteenth Century (Boston: Houghton Mifflin Co. 1903) I, p. 161.
  4. McLaughlin and Bushnell, op.cit., p. 472.





TARIFF COMMISSION OF 1882

Between the fiscal years 1874-1880, the accumulation of excessive surpluses in the Federal Treasury and their application toward the rapid reduction of the public debt was not considered as a desirable monetary situation; therefore, it was recognized that a reduction in taxes and a revision of the Tariff was necessary. While the inflated condition of the Treasury was the primary reason for the establishment of a Commission, other factors (which in later years increased in relative importance) were of some influence.

Foremost amongst these causes was the then prevalent inequality in existing tariff rates brought about by scientific advancement and technological innovations in industry. Secondly, there was a realization by members of Congress that the framing of Tariff legislation imposed an increasing hardship on their body and injustices and errors were bound to result.

By the Act of May 15, 1882, Congress authorized the appointment of a Commission composed of nine persons from civil life with instructions

"to take into consideration and to investigate all the various questions relative to the agricultural, commercial, mining, manufacturing, mercantile and industrial interests of the United States, so far as the same may be necessary to



the establishment of a judicious tariff, or a revision of the existing tariff, upon a scale of justice to all interests, and for the purpose of fully examining the matters which may come before it." 5

The Commission labored diligently in the six months allotted for the preparation of its report. Foremost amongst the results of its investigations were recommendations for the creation of a Customs Court and a general twenty percent reduction of existing tariff duties. However, "Congress practically disregarded the Commission's report and each chamber proceeded to draft a bill independently, accompanied by the usual sectional and industrial controversies as each interest attempted to gain the maximum benefits from the proposed legislation."<sup>6</sup>

The outcome of this apparent failure of the work of the Commission was the discouragement for many years of any proposal to delegate to any administrative board or Commission the power to assist Congress in framing tariff legislation. Nevertheless, historical evidence has manifested the fact that the work of the Tariff Commission of 1882 was not in vain. In fact, one

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5. 22 United States Statutes at Large 54.

6. Joshua Bernhardt, The Tariff Commission - Its History, Activities and Organization. (New York: D. Appleton and Co. 1922) p. 8.

# THE HISTORY OF THE CITY OF BOSTON

FROM THE FIRST SETTLEMENT  
TO THE PRESENT TIME

BY  
JOSEPH NEALE, ESQ.  
OF THE BARR, AT THE MIDDLE TEMPLE, IN LONDON.  
IN TWO VOLUMES.  
THE SECOND VOLUME.  
LONDON, PRINTED BY J. JOHNSON, ST. PAULS CHURCH-YARD, 1780.

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eminent authority on the subject has expressed himself by saying "the Tariff of 1883 was a better piece of legislation because of the recommendations of the Commission than it would have been without them."<sup>7</sup>

COST OF PRODUCTION STUDY BY THE  
DEPARTMENT OF LABOR

"The direct cause for the third attempt to provide for the study of tariff rates and problems was the increasing significance of the theory of international comparative production costs."<sup>8</sup> By the Act of June 13, 1888, a new Democratic Congress directed the newly created Department of Labor

"to ascertain, at as early a date as possible, and whenever industrial changes shall make it essential, the cost of producing articles at the time dutiable in the United States, in leading countries where such articles are produced, by fully specified units of production, and under a classification showing the different elements of cost, or approximate cost of such articles of production, including the wages paid in such industries per day, week, month, or year, or by the piece; and hours employed per day; and the profits of the manufacturers and producers of such articles; and the comparative cost of living, and the kind of living."<sup>9</sup>

In accordance with the provisions of the Act, a special Bureau in the Department of Commerce and Labor

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7. Frank W. Taussig, Free Trade, Reciprocity, and the Tariff (New York: The Macmillan Co. 1920), p. 187.

8. Bernhardt, op.cit., p. 8.

9. 25 United States Statutes at Large 182.



THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
JANUARY 1950

TO THE HONORABLE CHAIRMAN OF THE BOARD OF TRUSTEES  
OF THE UNIVERSITY OF CHICAGO  
FROM THE DEPARTMENT OF CHEMISTRY  
SUBJECT: REPORT ON THE PROGRESS OF RESEARCH  
DURING THE YEAR 1949

The Department of Chemistry has been fortunate in having a very successful year. The research program has been carried out in a most efficient manner, and the results have been of the highest quality. The following is a summary of the work done during the year 1949.

The first part of the year was devoted to the study of the properties of the new compound,  $C_{60}$ . This compound was discovered by the late Professor H. Kroto, and its properties are of great interest to the scientific community. The Department has been working on this compound since its discovery, and has made many important contributions to the understanding of its structure and properties.

In the second part of the year, the Department has been working on the synthesis of new compounds. This work has been carried out by the late Professor R. B. Nielsen, and has resulted in the discovery of several new compounds. These compounds are of great interest to the scientific community, and their properties are being studied in detail.

The third part of the year was devoted to the study of the properties of the new compound,  $C_{70}$ . This compound was discovered by the late Professor H. Kroto, and its properties are of great interest to the scientific community. The Department has been working on this compound since its discovery, and has made many important contributions to the understanding of its structure and properties.

Very truly yours,  
[Signature]

was established in 1888 for the purpose of making investigations into comparative production costs. The work of this Bureau was completed in 1891 and the results were published as the sixth and seventh Annual Reports of the Commissioner of Labor. Due to the advent of the McKinley Administration with its inherent protectionist policy, the work of the Bureau was considerably curtailed. The Bureau remained more or less dormant until 1912, when, with the return of the Democratic Party to power, the cost of production study was re-created in the Bureau of Foreign and Domestic Commerce.

#### THE TARIFF BOARD 1910-1912

With the increasing growth of monopolies, alleged to be fostered by high tariff rates and the economic distress resulting from the Panic of 1907, general dissatisfaction with the old methods of framing tariff legislation developed. In 1907 the Merchants Association of New York adopted a resolution favoring the creation of a Tariff Commission "which shall take the tariff out of politics and politics out of the tariff."<sup>10</sup> A similar resolution was adopted by the National Association of

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10. Henry T. Wills, Scientific Tariff Making (New York: Blanchard Press 1913) p. 17.



Manufacturers in 1908. Eventually, the agitation in the business world brought forth tangible results. With the enactment of the Payne-Aldrich Tariff Act of 1909, authority was given to the President of the United States to employ such persons as he considered necessary to assist him in securing information in order to carry out the maximum and minimum provisions of the new law. Primarily for this purpose a Tariff Board composed of three Republican members was appointed by President Taft in 1909. In 1911, the President added two other members, both Democrats, to the Board.

Such independent action on the part of the President resulted in the first signs of opposition by certain members of Congress to the establishment of the Tariff Board. This latter group maintained that the framing of tariff measures was exclusively a legislative function; and if the Tariff Board were established, it should report directly to Congress instead of to the Executive. President Taft, however, who was an ardent advocate of a permanent Tariff Board or Commission, insisted upon the experiment and was aided by public opinion which had been further discouraged with the results of the Payne-Aldrich Tariff Law. Many attempts were made by the President to effect cooperation between the Board and the opposition party in Congress,





but they were of no avail. In spite of the hostility, the work of the Board continued, and in 1911-1912 exhaustive investigations and reports were submitted to the President concerning the pulp, woolen, and cotton industries. In following a policy of invariably accepting the decisions of the Board, President Taft was unwilling to sign tariff measures until the reports of the Board were available as a basis for judgment. As the preparation of the reports required careful investigation carried on by many experts in different parts of the world, and as in the reports submitted, the Board declined to frame recommendations in regard to future legislation, there was a great deal of impatience with its service. The Tariff Board was abolished on June 30, 1912 by the refusal of Congress to appropriate funds for its maintenance.

Although the Tariff Board had encountered a political fate similar to its two temporary predecessors, it had, nevertheless, achieved something in the way of providing a basis for the organization and policies of the present Tariff Commission as well as being the first successful effort to compile original data upon which to base tariff action.



### PRESENT TARIFF COMMISSION

As was mentioned previously, the cost of production division was re-created in the Bureau of Foreign and Domestic Commerce in 1912; however, the reports submitted by the division were of a limited nature and they failed to provide any reliable information to Congress as a basis for the writing of tariff bills.

In the meantime, violent changes in prices and costs of production, as well as the general upheaval of business throughout the world brought on by World War I, made the determination of equitable tariff rates a rather difficult matter. Both Congress and President Wilson finally realized the need of reliable information as a guide to the future tariff policies of the government. As a result of the demand for an agency for the purpose of ascertaining the truth in such matters, President Wilson, on January 24, 1916, in a letter to the Chairman of the House Ways and Means Committee urged the creation of a Tariff Commission:

"to provide the government with necessary data to furnish sound basis for policy which should be pursued in the years immediately ahead of us, years which will no doubt be full of many changes which it is impossible even for the most prescient to forecast." 11

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11. Bernhardt, op.cit., p.16.



ORGANIZATION, PURPOSE AND GENERAL POWERS  
OF THE UNITED STATES TARIFF COMMISSION

The Revenue Act of 1916, which created the United States Tariff Commission, contained several restrictions upon its organization and activities. And since the creation of the present Tariff Commission in 1916 there has existed amongst Congressmen a difference of opinion as to both the purpose and function of the body. The difference of opinion has conveniently at times fluctuated with the political views of whatever party happens to be in power. From a study of the Congressional records preceding the adoption of the present Tariff Commission, it is evident that the original intention of Congress was to simply create a special agency for assisting its members in one of their more intricate legislative problems. Some members of Congress entertained the opinion that the Commission might eventually be made a "non-partisan" customs arbitration body which would operate in a manner similar to the Interstate Commerce Commission.

Unfortunately, however, this plan was thwarted by effective lobbyists who, through political pressure, were successful in their attempts to elevate the newly created Tariff Commission from a Congressional advisory capacity to that of an administrative agency under





Presidential discretion. This scheme was accomplished by the stipulation in the law that the Commission should function as an aid to the Chief Executive.

To insure the establishment of a non-partisan body on the surface at least, the Act directed the President in making his appointments to the Commission to appoint members of different political parties and not more than three Commissioners could be of the same political party.

The essential purpose of the United States Tariff Commission is to aid Congress in all matters relating to tariff legislation by supplying accurate and reliable information. According to the first Chairman of the Commission, Dr. F. W. Taussig,

"Our essential task then is to act as the servants and assistants of Congress. We are to gather and prepare information, to sift the essential from the non-essential. We shall bend our utmost endeavors to be exhaustive in inquiry and at the same time brief and discriminating in statement. As regards advice, we must be sparing, since advice must often rest on the basis of established fundamental principles; and fundamental principles must be settled not by the Commission, but by Congress and by the Public. We have no Commission of a high flying sort." 12

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12. Frank W. Taussig, Address delivered before the Home Market Club, Boston, May 18, 1917.



It is both by law and interpretation that the Commission as originally created was purely a fact finding body. Its function was not to fix rates; "to name<sup>13</sup> rates; or even suggest what rates were desirable;" but merely to aid Congress in determining rates.

"The Commission pursues many lines of investigation which may be divided fundamentally into two classes: those which are conducted with the definite end in view of aiding Congress or the President in particular problems, and those which are in the nature of a general research." <sup>14</sup>

Shortly after its organization the Tariff Commission was confronted with abnormal conditions due to the entry of the United States into World War I. During the hostilities, the Commission's staff was extensively engaged upon various duties and investigations concerned with the prosecution of the war. In spite of the pressure of wartime demands upon the Commission and its staff, much was accomplished in anticipation of the return of normalcy.

The work of the Commission developed along two lines. Foremost were studies for the improvement of the administrative features of customs legislation. The second development under the Commission's general powers

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13. Bernhardt, op.cit., p. 24.

14. Ibid., p. 25.





have been the "Tariff Information Surveys," which have been provided for the various Congressional Committees and the general public. These "Tariff Surveys" and other publications edited by the Tariff Commission have been the most valuable single function performed by the Commission.

In accordance with the Revenue Act of 1916, the Tariff Commission was authorized to investigate the fiscal and industrial effects of the Customs Law in force; to determine the relationship between duties and raw materials and finished or partly finished products; to determine all questions relative to the arrangement of schedules and classification of articles in the several  
<sup>15</sup>  
schedules of the Customs Laws; to investigate the operation of the Customs Laws as to their effect upon the industries and labor of the country; and to submit reports of its findings to the Congressional Committees.

The Commission was further authorized to make a complete study of the tariff relations of the United States with foreign countries, as to commercial treaties, economic alliances, the effect of export bounties, preferential transportation rates, the volume of

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15. Section 701, Revenue Act of 1916.



importation as compared with the domestic production and consumption, and conditions, causes, and effects relating to competition of foreign industries with those of the United States, including dumping and cost of<sup>16</sup> production.

In order to assist the Commission in its investigations, the power to copy any document, paper, or record, pertinent to the subject matter under investigation, to summon witnesses, take testimony, administer oaths and require the production of books and papers, was ex-<sup>17</sup>tended to the Commission's staff. The power of the courts was invoked to enforce this provision, with<sup>18</sup> punishment for contempt in case of failure to comply.

#### EXECUTIVE INFLUENCE OVER THE COMMISSION

The Revenue Act of 1916 awarded the power of appointing six Commissioners under a stagger system as well as the authority of designating the Chairman and Vice Chairman to the Chief Executive. As the plan was originally conceived, it had the appearance of being

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16. Section 704, Revenue Act of 1916.

17. Section 701, Revenue Act of 1916.

18. Ibid.



in harmony with the incumbent administration at least. The six original Commissioners were Wilson appointees; and regardless of their political affiliations, it is evident that all of their views on the tariff were similar in many respects to those of President Wilson himself.

As far as Woodrow Wilson is concerned, he was formerly a college professor and well educated in the principles of economics. Although he recognized the doctrine of comparative cost advantage and the values of freer trade, he accepted protection as a practical necessity for the immediate policy of the United States. His views on the tariff are reflected in the following statement:

"Therefore we are to act upon the fundamental principle of the Democratic party, not free trade, but tariff for revenue, and we have got to approach that by such stages and at such a pace as will be consistent with the stability and safety of the business of the country." 19

Due to his preoccupation with the League of Nations and his untimely death, President Wilson's influence

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19. Phillip G. Wright, Tariff Making by Commission (Rawleigh Tariff Bureau, Washington, D.C. 1930) p. 17.





over the Tariff Commission was limited to that of appointments.

With the passage of the Tariff Act of 1922 the general powers of investigation afforded the Commission by the Revenue Act of 1916 were more or less omitted. The introduction of the President's power to supervise special investigations instigated the first major difficulty over the determination of the investigatory rule of the Commission. The Tariff Act of 1922 stated that:

"investigations to assist the President in ascertaining differences in cost of production under this section shall be made by the United States Tariff Commission and no proclamation shall be issued under this section until such investigation shall have been made. The Commission shall give reasonable public notice of its hearings and shall give reasonable opportunity to be heard. The Commission is authorized to adopt such reasonable procedure, <sup>20</sup> rules and regulations as it may deem necessary."

Concerning the interpretation of this part of the law, the remaining Wilson appointees, Commissioners Costigan, Lewis and Culbertson, disagreed with the newly appointed "protectionist" Commissioners of the Harding administration. The former members maintained that due

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20. Section 315 (e), Tariff Act of 1922.



to the statement that "the Commission is authorized to adopt such reasonable procedure, rules and regulations as it may deem necessary," and also the fact that from its origin, the Commission has exercised its discretion in conducting investigations, the President's role was superfluous. They felt that the Commission still retained the general powers of investigation it had under the Revenue Act of 1916. It was at this point that the trouble began which led to the President's final dominance of the Commission's investigations.

When an application for an investigation of pig iron was submitted, the three low tariff theorists (Wilson appointees) commenced to investigate iron and steel rates. At the same time the newly appointed Republican Commissioners, Mr. Marvin and Mr. Burgess being a minority, foresaw the possible results of reducing rates in the well protected iron and steel interests. Their fears were temporarily alleviated because in the interim President Harding, who was vacationing in Florida, received many complaints concerning the price of sugar; therefore, he immediately ordered the Tariff Commission to investigate the sugar situation. <sup>21</sup> Pre-

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21. Hearings before the Select Committee on Investigation of the Tariff Commission, U.S. Senate (Government Printing Office, Washington, D.C.) Part IV, pp.275-278.





viously, the President had followed a policy of leaving the Commission free to exercise the discretionary role of selecting its items for investigations, but his action in the sugar case definitely marked the turning point and ushered in a new policy of executive control over the Commission's investigations.

Before the President returned to Washington from his Florida vacation, he was frequently informed by Commissioners Marvin and Burgess that the existing majority on the Commission (Commissioners Costigan, Culbertson and Lewis) were acting rather hastily about opening up investigations which had not been definitely petitioned by domestic interests. On the other hand, Mr. Culbertson, who had furnished Senator Harding with advice and information on the tariff issue during the 1920 Presidential campaign, was continually urging President Harding, via letter, to stand on his original concept of the flexible tariff and leave the matter of investigation to the Commission. As for the President, he was experiencing a difficult problem and he had to choose between the two alternatives. Actually, the solution of the controversy was one of determining whether he, the President, should put his weight on the side of those interests which wanted to use the flexible



provisions to reduce existing rates or with those advocating further protection under such provisions. In making his decision, the President took into consideration two very important factors. First of all, it wouldn't prove beneficial to the administration if the entire tariff controversy was reopened after Congress had spent two years of study and effort in framing the new law, and secondly, there was a general public impulse toward the high duties resulting from the post war psychology of fear and excessive nationalism. In addition, the President had been especially impressed with the favorable response to his campaign speeches when he spoke of protection. This fact was brought out in a letter from him to Commissioner Culbertson, which stated in part:

"I know you will be interested when I tell you that at no time do I get a more enthusiastic response from my auditors than when I revert to the Republican policy of protecting the American grade standard and the American standard of living for workers." 22

Finally, the President case his lot with the protectionist minority group in the Commission when, prior to his return from Florida, he instructed the opposing leaders, Mr. Burgess and Mr. Culbertson, that all fur-

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22. Ibid., p. 618.



ther independent action by the Commission was suspended until his return. Such direct action by the President was another step toward the eventual subordination of the independent role of the Commission to the Chief Executive.

The administration was further strengthened with the appointment of new personnel to the Commission. With the resignation of Dr. Page in March 1923, the President appointed Henry H. Glassie, a Maryland Democrat, to fill the vacancy. He also promoted Mr. Marvin to the position of Chairman. As the Commission was then constituted, it can be said that there were three "protectionists" as opposed to three "low tariff theorists." The element of non-partisanship was fulfilled by an equal division of the Commissioners between the two major political parties. Nevertheless, with the chairmanship in the hands of Mr. Marvin, an avowed protectionist, the President and the Republican administration were satisfied as to the controlling power in future  
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investigations.

When a decision on the sugar investigation had to be rendered during the Coolidge administration, the

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23. Ibid., pp. 271, 278, 281, 283, 66-663, and 892-894.



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President discovered himself in a rather embarrassing situation. As usual, the Commission was divided concerning the proposed sugar rates. In addition, Mr. H. Glassie was officially disqualified by Congress from participation in the case due to his affiliation with Louisiana sugar interests. Thus, instead of a divided opinion, the removal of Commissioner Glassie resulted in the President's being faced with the majority report of Commissioners Costigan, Culbertson, and Lewis, recommending a reduction in sugar rates.

In order to prevent a repetition of a similar situation the Chief Executive employed a bit of political strategy. Commissioner Culbertson, who always proclaimed himself as a Republican but who consistently stood with those who favored moderation in tariff rates, was politely "kicked upstairs" to the position of Minister to Roumania.

When the term of office of David J. Lewis expired on September 7, 1924, he was unanimously recommended to President Coolidge for reappointment by all of his fellow Commissioners and many others. Yet in the eyes of the President he had been one of those who had signed the majority report advocating a substantial reduction in the sugar duty. In connection with the



President's decision, a curious incident regarding Mr. Lewis' reappointment is related in the annals of the Senate Investigating Committee's report.

According to a letter sent by Commissioner Culbertson to Commissioner Costigan, the former related to the latter that in response to a telephone call he went to the President's office. The President informed Commissioner Culbertson that he intended to reappoint Mr. Lewis but that he desired that Mr. Lewis prepare and give to him a letter of resignation to be effective if at any future time he (the President) desired to accept. On the following day Mr. Lewis went to the President's office to receive his Commission. When he entered, the President had before him the Commission. The President requested, as a condition of Mr. Lewis' reappointment, that he sign an undated resignation which might be used at the President's discretion. Mr. Lewis explained that he did not feel free to furnish the President with the requested resignation. According to Mr. Lewis, the President was visibly disturbed and said with a little heat that it did not make any difference anyway, that the position would be held subject to the pleasure of the President. Lewis then said to the President that only the two of them knew that the Commission was signed and he suggested that the President was at liberty to destroy it. The





President, however, did not respond to this suggestion and Lewis left the President's office with the Commission. The Commission was, however, for a recess appointment and it expired the following March, when the President appointed a personal friend, Alfred P. Dennis, in Mr. Lewis' place.<sup>24</sup>

Undoubtedly, in appointing Commissioners, the various Presidents have consulted not only their own convictions, but even more so, those of the ever-present interested groups intimately connected with the incumbent administration. It is evident from what has been mentioned in the preceding paragraphs that the "business interests" which have always made it a point to influence the members of Congress have successfully carried out to a great degree the molding of the personnel of the United States Tariff Commission.

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24. Ibid., pp. 350-353.



## CHAPTER IV

THE GROWTH OF THE PRESIDENT'S AUTHORITY  
OVER TARIFF MATTERS

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DELEGATION OF LEGISLATIVE AUTHORITY

The division of government into three distinct branches has been more or less accepted as a doctrine indispensable to civil liberty. Even Aristotle in his Politics stated "that in every state there are three divisions; the general assembly deliberating upon public affairs, a body of magistrates, and a judiciary."<sup>1</sup>

Montesquieu, however, was the first one to introduce the theory of the separation of powers as a fundamental principle of our modern political science.

"When the legislative and executive powers are united in the same person or body," says Montesquieu, "there can be no liberty because apprehensions might arise lest the same monarch or senate should enact tyrannical laws to execute them in a tyrannical manner."<sup>2</sup>

It is upon this doctrine that the American constitutional system rests. The Constitution separates the three major powers of government, assigning each to its own department or division; thus it seeks to avert that

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1. William Bondy, The Separation of Governmental Powers, (Studies in History, Economics and Public Law, Columbia University, 1896), Vol. 5, No.2, p. 12.

2. Ibid., pp. 13-14.

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
JANUARY 1964  
MEMORANDUM FOR THE RECORD  
SUBJECT: [Illegible]  
[Illegible text follows, consisting of several paragraphs of faint, mostly illegible handwriting. The text appears to be a formal report or memorandum, possibly discussing chemical research or administrative matters. Key words like 'Department of Chemistry' and 'University of Chicago' are visible at the top. The body of the text is too faded to transcribe accurately, but it seems to follow a standard memorandum format with a subject line and several paragraphs of text. There are some small, dark marks on the right edge of the page, possibly from staples or binding holes.]

threat to the liberties of the people which Montesquieu and his followers believed must result from a merger of the three powers or any two of them in the same hands.

From the early days of our country, we have always had the "strict constructionists" who have upheld the doctrine of the rigid separation of powers. On the other hand, we likewise have enjoyed the presence of the so called "loose constructionists," who have propounded the idea that "all powers requiring decision, and unity of plan should be delegated to the executive."

The history of American Constitutional Law is not lacking in cases pertaining to the judicial solution of the controversy between the two opposing factions. The problem eventually confined itself to the question of the constitutionality of the delegation of legislative power to the executive.

The earliest case bearing upon the relation of the delegation of legislative power of Congress to the executive was that of the United States v. Brig Aurora, which arose out of the Non-Intercourse Act of 1809. The Act, in forbidding trade with Great Britain and France, authorized the President to suspend its provisions when, in his judgment, certain events had taken place, and likewise to revive them upon the occurrence of certain other events,





of which also he was to be the judge. The Aurora was seized for attempting to trade contrary to the provisions of the Act after it had been revived by Presidential proclamation. The counsel for the claimant argued: "To make the revival of a law dependent upon the presidential proclamation is to give that proclamation the force of a law." "Congress cannot transfer the legislative power to the President."

The Court, nevertheless, upheld the government, saying, "we see no sufficient reason why the legislature should not exercise its discretion in reviving the Act of 1809, either expressly or conditionally as its judgment should direct."<sup>3</sup>

The precedent thus established was followed in 1891 in the case of *Field v. Clark*, in which the point at issue was the validity of a provision of the Tariff Act of 1890 empowering the President to suspend certain other provisions of the Act in certain contingencies to be ascertained by him.

The Court cited an imposing list of similar provisions from earlier statutes and of presidential proclamations in pursuance thereof, and concluded that both on

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3. Corwin, op.cit., pp.116-117.



the basis of precedent and of principle the provision in question was unassailable.

"That Congress cannot delegate legislative power to the President," Justice Harlan asserted, "is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the Constitution. The Act of October 1, 1890 -- is not inconsistent with that principle. Nothing involving the expediency or just operation of such legislation was left to the determination of the President. Legislative power was exercised when Congress declared that the suspension should take effect upon a named contingency. What the President was required to do was simply in execution of the act of Congress." 4

Evaluated by this test, subsequent Acts of Congress in the same field have gone much further. By the Tariff Act of 1922 the duty was imposed upon the President of determining, with the aid of advisers, differences in costs of production here and abroad, and of making increases and decreases in the customs rates to equalize such costs; and by the Tariff Act of 1930 he was authorized to raise or lower the rates set by the statute as much as fifty percent. In *Hampton v. United States*, the former provision was attacked on the ground that "the difference in cost of production at home and abroad cannot be found as a fact without using choice between results at every stage, thus expressing exercise of the

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4. Field v. Clark, 143 United States 649.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861.

2. The second part is a report from the Secretary of the Treasury, dated January 1, 1861.

3. The third part is a report from the Secretary of the Interior, dated January 1, 1861. It contains a list of the lands owned by the United States, and a statement of the amount of land sold during the year. It also contains a statement of the amount of land reserved for the use of the United States, and a statement of the amount of land reserved for the use of the States and Territories.

4. The fourth part is a report from the Secretary of the War, dated January 1, 1861. It contains a statement of the number of soldiers in the United States Army, and a statement of the number of soldiers in the United States Navy.

5. The fifth part is a report from the Secretary of the Navy, dated January 1, 1861. It contains a statement of the number of ships in the United States Navy, and a statement of the number of ships in the United States Marine Corps.

6. The sixth part is a report from the Secretary of the Army, dated January 1, 1861. It contains a statement of the number of soldiers in the United States Army, and a statement of the number of soldiers in the United States Marine Corps.

7. The seventh part is a report from the Secretary of the Marine Corps, dated January 1, 1861. It contains a statement of the number of ships in the United States Navy, and a statement of the number of ships in the United States Marine Corps.

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13. The thirteenth part is a report from the Secretary of the Marine Corps, dated January 1, 1861. It contains a statement of the number of ships in the United States Navy, and a statement of the number of ships in the United States Marine Corps.

14. The fourteenth part is a report from the Secretary of the Marine Corps, dated January 1, 1861. It contains a statement of the number of ships in the United States Navy, and a statement of the number of ships in the United States Marine Corps.

15. The fifteenth part is a report from the Secretary of the Marine Corps, dated January 1, 1861. It contains a statement of the number of ships in the United States Navy, and a statement of the number of ships in the United States Marine Corps.

16. The sixteenth part is a report from the Secretary of the Marine Corps, dated January 1, 1861. It contains a statement of the number of ships in the United States Navy, and a statement of the number of ships in the United States Marine Corps.

17. The seventeenth part is a report from the Secretary of the Marine Corps, dated January 1, 1861. It contains a statement of the number of ships in the United States Navy, and a statement of the number of ships in the United States Marine Corps.



legislative will." The Court overruled the contention, but in so doing Chief Justice Taft found it necessary to supplement as well as clarify the reasoning in *Field v. Clark* with precedents and arguments of a radically different tendency. He said in part:

"The rule is that in the actual administration of the government, Congress or the legislature should exercise the legislative power, the President or the State Executive, the Governor, the executive power, and the courts or the judiciary the judicial power, and in carrying out that constitutional division into three branches it is a breach of the national fundamental law if Congress gives up this legislative power and transfers it to the President, or to the judicial branch, or if by law it attempts to invest its members with either executive power or judicial power....This is not to say that the three branches are not coordinate parts of one government and that each in the field of its duties may not invoke the action of the other two branches insofar as the action invoked shall not be an assumption of the constitutional field of action of another branch." 5

From the evidence presented in the above Court excerpts it is obvious that there developed a tendency toward the "loose constructionists" doctrine of the separation of powers as well as a general acceptance of the principle that legislative authority could be delegated to the Executive in order to carry out a policy or law within certain definite limits. Actually, the Con-

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5. J.W. Hampton Jr. and Co. v. United States, 276 U.S. 394, 396-397.



stitution confers "all legislative powers" upon Congress and prohibits that body from transferring legislative powers to others. Yet the Constitution rests in the hands of the President the execution and administration of laws passed by Congress; thereby placing large discretionary powers with the Chief Executive for carrying out a law once it had been enacted by Congress. The results of this policy according to recent practices of our government have been for the legislative to make laws so indefinite and vague that administrative authorities have exercised unlimited discretion in executing their delegated rights which are in many cases fundamentally legislative in character.

#### PRESIDENT'S POWER TO CHANGE CUSTOMS RATES

By the authority of Section 336 of the Tariff Act of 1930 (originally 315 of the Tariff Act of 1922) the President is provided with the power to increase or decrease existing tariff rates up to fifty percent. The wording of the statute is so arranged that it invariably operated to the greater advantage of certain pressure groups who were successful in influencing Congressmen during the making of the two recent tariff acts to put certain commodities or articles on an ad valorem or compound basis. The proof of this lies in the fact that





on specific rates the President is limited to a change of fifty percent; but if the rates are an ad valorem basis, the President may, by changing the norm of valuation from the "foreign value" to the "American selling price" greatly increase the amount of duty collectable than otherwise would be received on a specific duty basis.

When the President changed the rate of duty on "barium dioxide" from four cents a pound to six cents a pound, J. W. Hampton, Jr. and Company challenged the constitutionality of his action in the Courts. They rested their case upon two grounds:

- 1) That section 315 of the Tariff Act of 1922 was invalid because it constituted a delegation to the President of legislative power which according to Article I Section I of the Constitution, is vested in the Congress.
- 2) That the section was void because according to Article I Section 8 of the Constitution, the power to lay and collect taxes, duties, imports, and excises is vested in Congress, not the President. 6

After the case had passed through the lower Courts, the final outcome was a unanimous decision by the Supreme Court declaring section 315 of the Tariff Act of 1922 to be constitutional.

"The theory accepted by the Court in the Hampton Case was that Congress is really acting through

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 6. J.W. Hampton Jr. and Co. v. United States, 276 U.S.394.





the President. He is an agent acting within prescribed limits. And any attempt on the part of the courts to control or regulate the President's actions would be judicial interference with the legislative process." 7

#### PRESIDENT'S POWER TO CHANGE CLASSIFICATIONS

With the President's authority to change customs rates within definite limits being held constitutional it wasn't long before he began exercising his rights, with the favorable decision of the Hampton Case as support, to make new classifications.

Paragraph 710 of the Tariff Act of 1922 reads as follows: "Cheese and substitutes, therefore, 5 cents per pound, but not less than 25 per centum ad valorem." Actually, this compound rate covers approximately one hundred and fifty different varieties of imported cheese. When put into operation it was impossible for such a compound duty to equalize the differences between the foreign and domestic costs of each particular item. It wasn't long, therefore, before an investigation of the U. S. Tariff Commission revealed that Swiss cheese was selling at a higher price than a similar domestic cheese. Upon receiving the report of the Commission, the Presi-

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7. Larkin, op.cit., p. 36.

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dent changed the classification to read: "Cheese by whatever name known, having the eye formation characteristic of the Swiss or Emmenthaler type,  $7\frac{1}{2}$  cents per pound, but not less than  $37\frac{1}{2}$  per centum ad valorem."

The Fox River Butter Company immediately challenged the increase in duty primarily on the grounds that it was unconstitutional for the President to change a classification by means of inserting an entirely new paragraph<sup>8</sup> in the law.

The Customs Court held the Tariff Act unconstitutional, but this decision was later reversed by the Court<sup>9</sup> of Customs and Patent Appeals. A petition by the former Court for a "writ of certiorari" from the Supreme Court to review the action of the Court of Customs and Patent Appeals was denied. It is worth mentioning here that a legal maxim says: "The denial of a 'writ of certiorari' imports no expression of opinion upon the merits of the case, as the bar has been told many<sup>10</sup> times."

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8. Fox River Butter Co. v. United States (TD 44667)  
Treasury Reports, February 24, 1931.

9. United States v. Fox River Butter Co. (TD 45675)  
Advance Reports C.C.R.A. May 2, 1932.

10. United States v. Carver, 260 U.S. 482, 490.







In sanctioning the "Swiss Cheese" case, the Supreme Court was consistent with its policy laid down in the "barium dioxide" litigation. In brief, this last mentioned liberal interpretation of the Court heartily endorsed the right of the President to change the wording of a statute. To consider such Presidential action as being constitutional is putting the stamp of approval of the highest Court in the land on a function (i.e., the writing of a law) which has never been regarded as a prerogative of the Executive branch of our government.

#### PRESIDENT'S POWER TO CHANGE VALUATION

Section 336 of the Tariff Act of 1930 states in part that if the (tariff) Commission finds through investigation that differences in costs of production cannot be equalized by changing the rate 50 percent, it shall make the matter known in its report to the President and shall specify therein such necessary ad valorem rates of duty based upon the American selling price (which is defined in section 402(g) of the Act). In no case shall the total decrease of such rates of duty exceed 50 percentum of the rates expressly fixed by statute, and no such rate shall be increased.

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 11. Section 336, Tariff Act of 1930.



As was mentioned earlier in the section concerning the President's power over customs rates, the general impression created by the flexible provisions of the two recent tariff acts is that tariff duties cannot be altered by more than the stipulated amount of 50 percent. Actually, however, the President may, by transferring the basis of valuation from the "foreign market value" to the "American selling price" materially increase the amount of duty collectable. Thus, by changing the valuation without necessarily increasing the rate, the amount of duty assessed can legally exceed the supposed limit of 50 percent.

In order to illustrate the extent of the President's power in such a situation the following examples are submitted.

In the Tariff Commission's Report concerning its investigation of "Rag Rugs" (hit and miss type) it was recommended that in order to equalize the difference between foreign and domestic costs of the rugs, the domestic<sup>12</sup> valuation plan should be used.

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12. U.S. Tariff Commission, Rag Rugs (Government Printing Office, Washington, 1928) pp. 24-25.





Rates of duty-----Rag Rugs, "hit and miss"  
Act of 1922 stipulated 35% of the foreign  
value.

President's proclamation, 35% of the American  
selling price.

The corresponding ad valorem duties are:

<u>Value per sq. yd.</u>	<u>Amount of</u> <u>duty collected</u>
1) Foreign value	25.5¢ x .35 equals 9.97¢
2) American selling price	61.7¢ x .35 equals 21.59¢

As the above figures indicated, the President legally  
altered the amount of duty per square yard more than 100%  
without changing the rate.<sup>13</sup>

In another case involving imported taximeters, the  
Tariff Act of 1922 provided a compound duty which in-  
cluded a 45 percent ad valorem rate.<sup>14</sup> After the Tariff  
Commission's investigation, the President proclaimed a  
reduction in the ad valorem rate to 27.1 percent and  
simultaneously changed the basis of valuation from the  
"foreign value" to the "American selling price."<sup>15</sup> On  
the surface there was a decrease in the rate of duty, but

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13. Ibid.

14. U.S. Tariff Commission, Taximeters (Government Print-  
ing Office, Washington, 1928), p. 31.

15. Ibid., p. 47.



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the net effect of the changed basis of valuation was an increase of 115 percent in the amount of duty collected.

The term "American Selling Price" is determined by the price of an article manufactured or produced in the United States and possessing very similar characteristics to the one imported.

There are, of course, limits to the American selling price, but they are not comparable to the legislative limits fixed by statute. In short, the so-called flexible or scientific plan which was alleged to have prescribed definite rules for equalizing foreign and domestic costs provided, instead, wide administrative powers in the hands of the President.

#### THE USE OF EXECUTIVE AGREEMENTS UNDER THE RECIPROCAL TRADE PROGRAM

With the passage of the Trade Agreements Act in 1934 the previous growth of Presidential authority over tariff policy was continued through the medium of Executive Agreements. The right of the Executive to enter into binding Executive Agreements without the necessity of subsequent Senate approval has been confirmed by long usage. Ever since the adoption of the Constitution, binding Executive Agreements have been concluded by the President with other nations. The validity of such



agreements has never been seriously questioned by the courts.

The previously mentioned failure of the Kasson trade treaties is indicative of the unsuccessful attempts of reciprocity treaties requiring Senate ratification. On the other hand, under the McKinley Tariff Act of 1890 thirteen executive trade agreements were negotiated and twelve became effective. Under Section 3 of the Dingley Tariff Act of 1897, which, unlike Section 4, authorized the conclusion of trade agreements without Senate concurrence, fifteen executive agreements<sup>16</sup> were successfully concluded with eight countries.

As stated by the U.S. Tariff Commission in 1933, in its study summarizing our experience in this matter:

"The past experience of the United States with respect to the difficulty of obtaining reciprocal tariff concessions by means of treaties and the greater success in negotiating Executive Agreements under previous authorization by the Congress may be significant as a guide to future policy regarding methods of tariff bargaining."<sup>17</sup>

Accordingly, when in 1933 we faced the problem of

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16. For explanation of term see section on Executive Agreements (Chapter II).
17. U.S. Tariff Commission, Tariff Bargaining Under Most Favored Nation Treaties (Government Printing Office, Washington, 1934), p. 62.



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what method to pursue in the task of bargaining down trade barriers with foreign nations, the answer seemed clear. The Trade Agreements Program is based upon the principle of tariff adjustment through executive agreements.

In passing the law, Congress, in order to guard against the furtherance of administrative and beaucratic powers, provided the following limitations upon Presidential authority:

- 1) The limitation that no article can be transferred between the dutiable and free lists.
- 2) The limitation that no proclamation shall be made increasing or decreasing by more than 50% any existing rate of duty.
- 3) Public Notice of the intention to negotiate an agreement in order that any interested person may have an opportunity to present his views to the President, or to such agency as the President may designate, under such rules and regulations as the President may prescribe. 18

In spite of the above listed limitations, the language (partly stated above) of the Reciprocal Trade Act of 1934, still provides the President with a certain amount of arbitrary discretion in allowing the Chief Executive to make his own rules and regulations and to

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18. William S. Culbertson, Reciprocity (New York: McGraw-Hill Book Co. Inc. (pp.107-108.

that there is a need for a more systematic and  
co-ordinated approach to the study of the  
history of the region. The present situation is  
unsatisfactory and it is hoped that the  
committee will be able to make some progress.

The committee has been set up to study the  
history of the region and to make recommendations  
to the Council. It is hoped that the committee  
will be able to make some progress in the  
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designate whomever he pleases to hold the hearing. In line with this thought, the following testimony of Mr. Francis B. Sayre, one time Assistant Secretary of State, reflects the recognition of continued Presidential control over tariff policy:

"The yard stick there again is the discretion of the President. Congress has realized that, to obtain results, it must leave to him the exercise of those powers subject to a yard stick which must be indefinable. It must rely on his discretion." 19

Thus, as our tariff policy exists today, it has continued a national policy which began in 1921; namely, the attempt at the "scientific" administration of the tariff by administrative rather than Congressional action.

#### POLITICAL IMPLICATIONS

Under the existing tariff law, the President is relatively free to carry out any policy of his own choosing. Not only in the matter of appointing Commissioners (which was discussed in Chapter III), but also on the question deciding upon the Tariff Commission's Reports and recommendations, the President has the final word. Since 1930, the President has been limited by section 336, which requires an investigation and recom-

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19. Ibid., p. 108.





mendation by the Tariff Commission before the President can act; nevertheless, the law says nothing about the Chief Executive being bound to accept the Commission's recommendations. Legally, the President holds the supreme authority to disregard or accept any recommendations, authorized or not, in altering or fixing Customs rates. Section 336 of the Tariff Act of 1930 states:

"The President shall approve the rates and changes in classification, if in his judgment such rates of duty and changes are shown by such investigation of the Commission to be necessary to equalize such differences in costs of production." 20

Under such an arrangement, the President is provided with the necessary authority to shift his tariff policies at will, to manipulate tariff rates to his own liking, and by both processes, to generate political favor to the administration, interested groups, individuals, or himself. In connection with the political significance of Presidential authority over tariff matters, the following incident is related:

As the Congressional election of 1926 was approaching, there was much apprehension in official circles over the possible election results in the States of Washington and Oregon. The producers of "red cedar shingles" were clamoring for further protection from the imports from

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20. Section 336(c), Tariff Act of 1930.





British Colombia. The party in power was facing the loss of congressional seats unless this element could be appeased. At the same time, a much larger element throughout the country was militantly opposed to any further increase in the duty on shingles. The Tariff Commission's preliminary survey indicated that so far as variations in production costs were concerned there was little or none between British Colombia, and Washington and Oregon. Nevertheless, at a very appropriate time the Commission received word from the White House that a thorough investigation of the comparative costs of cedar shingles should be instituted, and that the report would not be expected by the President until after the first week in November. On its face such a request was quite ominous. The Commission's experts proceeded to the Northwest and began one of the most thoroughgoing and exhaustive investigations yet undertaken. And while they investigated, the party's spokesman made political capital of the incident. The cedar shingle industry of Washington and Oregon was reassured of the genuine interest of the party and felt safe in supporting it at the polls. But when the smoke screen of the campaign had risen the Commission's report was made public. It recommended no increases in the duty on shingles. But



the President was able to carry on for another two years with the assured backing of a majority of his own party<sup>21</sup> in both houses of Congress.

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21. Larkin, op.cit., pp.58-59.

1. The first part of the paper is devoted to a general discussion of the problem of the existence of a solution of the system of equations (1) for arbitrary values of the parameters  $\alpha$  and  $\beta$ . It is shown that the system has a solution if and only if the condition  $\alpha + \beta = 1$  is satisfied.

2. In the second part of the paper, the problem of the uniqueness of the solution of the system (1) is considered. It is shown that the system has a unique solution if and only if the condition  $\alpha + \beta = 1$  is satisfied. The uniqueness of the solution is proved by the method of the maximum principle.

3. In the third part of the paper, the problem of the stability of the solution of the system (1) is considered. It is shown that the system has a stable solution if and only if the condition  $\alpha + \beta = 1$  is satisfied.



## CHAPTER V

THE FLEXIBLE TARIFFSECTION 315

The flexible section 315 of the Tariff Act of 1922 had no antecedent in American tariff legislation. When the Act of 1922 was approved by Congress, the flexible section was claimed to be the device whereby the tariff would be taken out of politics and made scientific. With such optimistic assumptions accompanying the introduction of the flexible section, and with such a pronouncement to a country and world confused in almost every phase of its economic life, the establishment and administration of section 315 became of paramount interest. For the first time in history the President was authorized to raise or lower the tariff rates in order to equalize foreign and domestic costs of production. On paper at least, the Act provided for flexibility in the full sense of the word.

In one subdivision of the section, a provision was made for change to the American valuation basis if the maximum duty increases provided for on the prevailing foreign valuation basis did not accomplish equalization

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JOURNAL OF THE  
ROYAL ANTHROPOLOGICAL INSTITUTE

Vol. 40

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of foreign and domestic costs of production. Thus, the entire problem of valuation became interwoven with the flexible arrangement. A consideration of that problem should logically precede an examination of the other provisions of the section.

### THE PROBLEM OF VALUATION

In determining the origin of the American valuation concept, it is of historical significance to discover that its initial appearance was in the very first Tariff Act passed by Congress. As set down in the Act of 1789, a 5% ad valorem duty was levied on miscellaneous merchandise at the time and place of importation. This dutiable value was to be arrived at by adding 20% to the actual cost thereof, if the imports originated at the Cape of Good Hope, or beyond, and 10% if they came from  
<sup>1</sup>  
 any other place in the country.

In 1795, Congress terminated the six year operation of the American valuation plan by stipulating in the Act of 1795 that the dutiable basis for ad valorem rates  
<sup>2</sup>  
 would be "the actual cost at the place of exportation."

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 1. U.S. Tariff Commission, Dictionary of Tariff Information (Government Printing Office, Washington, 1923), p. 282.

2. Ibid., p. 282.

1. The first part of the paper discusses the importance of understanding the underlying mechanisms of the observed phenomena. This is crucial for developing effective interventions and policies. The authors argue that a comprehensive understanding of the system is necessary to address the complex challenges it presents.

2. The second part of the paper focuses on the methodology used in the study. The authors describe the data collection process, the statistical models employed, and the validation techniques used to ensure the reliability of the results. They emphasize the importance of rigorous scientific methods in this type of research.

3. The third part of the paper presents the results of the study. The authors show that the proposed model accurately predicts the observed outcomes across different scenarios. They also discuss the limitations of the current study and suggest areas for future research to further refine the model and its applications.

4. The fourth part of the paper discusses the implications of the findings for practice and policy. The authors argue that the results have significant implications for the field and provide valuable insights for decision-makers. They conclude by summarizing the key findings and reiterating the importance of continued research in this area.

5. Finally, the authors provide a concluding statement that summarizes the overall contribution of the paper. They express their hope that the findings will be useful to the research community and contribute to the advancement of knowledge in the field.

This new foreign valuation plan remained in operation until the passage of the Act of 1833, which stated that duties were to be assessed upon the value thereof at the port where they were entered. This return to the American valuation concept did not become effective until June 10, 1842, because the Act of 1833 had extended the life of the Act of 1832 until that date. The American plan remained in effect for only two months, as the Act of August 30, 1842, provided that duties were to be levied upon the actual market value or wholesale price at the time when purchased in the principal markets of the country from which they were imported into the United States.<sup>3</sup>

Upon numerous occasions since the passage of this latter Act, especially in 1909, 1913, 1920, and 1921, unsuccessful attempts have been made to change the foreign valuation basis to the American plan. History reveals that prior to the tariff revision that took place from 1921 to 1922, American valuation had been in operation for only two months (June - August 1842) in the nineteenth century and to a limited degree during the six years in the eighteenth century.

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3. House Documents 61st Congress, 2nd Session, Vol.129, pp.110 and 135.





During the first two months of 1921, the Committee of Ways and Means of the House held hearings upon prospective changes in the existing tariff law. Amongst the more important problems that arose was the question of American valuation. The plan to introduce into the new tariff law the "American selling price" concept as the basis for the valuation of imports was attacked by some and supported by others.

Those in opposition to the change from the "foreign value" to the American Valuation plan maintained that it would mean the discarding of over a hundred years' accumulation of customs data and Court decisions and interpretations, all of which were based upon the foreign valuation system. They argued that it would place the tariff in the hands of the business interests in the country who could conceivably regulate production at home, thereby determine prices which, in turn, would serve as the dutiable basis of the American valuation<sup>4</sup> system.

Furthermore, it was held that the plan would result in importers attempting to manipulate the domestic market between the date of their purchases abroad and the

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4. Hearings on General Tariff Revision before the Committee on Ways and Means, 66th Congress, 3rd Session, Pt. IV, p. 4182.



date of the arrival of the goods in the United States. A situation was depicted wherein the importer might enter goods into Canada, for example, and then place in a bonded warehouse with subsequent withdrawal and exportation to the United States when the current selling price was depressed here.<sup>5</sup> It was further pointed out that under American valuation, future buying would be practically rendered impossible, since the amount of duty payable at the future date of importation could only be roughly approximated at the time the future contracts were entered into.<sup>6</sup>

The argument that American valuation would effectively deal with the problem of depreciated foreign exchanges was discounted by those opposed to the plan. They balanced this point by declaring that price levels abroad had risen by approximately the same amount that exchange rates had fallen; therefore, the continued use of foreign valuation would not decrease the amount of duty revenue for that reason.<sup>7</sup>

The final objection was made on the grounds that it

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5. Ibid., p. 4208.

6. Ibid.

7. Ibid., p. 4209.





would be impossible, in every case, to find a comparable and competitive American product. If none could be found, then, presumably, the foreign value would be taken and worked back to the United States by adding transportation charges, commissions, profits, and incidentals in order to find the dutiable value. Such a procedure, it was claimed, would involve much more work than the use of the foreign valuation basis.<sup>8</sup>

Those public officials in support of the plan believed that although a change from foreign to American valuation would require considerable adjustment of government machinery, the task was not impossible.<sup>9</sup>

Furthermore, it was felt that American valuation was the best way to render undervaluations impossible, so that the government would receive all the revenue intended for it under the terms of any tariff measure.<sup>10</sup> Also, in adopting this plan, countries with higher production costs would not be discriminated against, such as was the case when foreign valuation was used.<sup>11</sup>

Next it was pointed out that in our first Tariff Act

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8. Ibid., pp.4210-4236.

9. Ibid., pp.4260-4271.

10. Ibid.

11. Ibid., pp.4277-4278.



there was a provision for domestic valuation, but that, at that time, with manufacturing but slightly developed in this country, difficulty was naturally experienced in establishing the American value of many of the imported articles. It was maintained that this situation had changed, and that most imports now were of such character that their value in the American market was easily ascertainable.<sup>12</sup>

A final argument advanced in favor of the plan was to the effect that whenever monopoly conditions of production might prevail in the United States which would give the producer the power to set prices, and so the duty, this could be met by placing a specific duty upon imports of such commodities.<sup>13</sup>

A short time after the conclusion of the House hearings, the chairman of the Ways and Means Committee called upon the Tariff Commission to make any suggestions or proposals it might see fit, with regard to contemplated legislation providing for the assessing of ad valorem duties on American valuation. In the subsequently submitted report, the Commission did not express any

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12. Ibid., p. 4281.

13. Ibid.



opinion concerning the adoption of the proposed change, but it did evaluate the relative merits of both sides of the issue.

Foremost, the Commission cited the difficulty of determining the foreign value, especially of those articles primarily designed for exportation. Furthermore, attention was called to the difficulty and often the impossibility of securing foreign costs. Such difficulties, along with the inherent problems arising from invoice prices, instability of exchange rates, and differences in the cost of production in foreign countries, resulted in the Commission's advocating the abandonment<sup>14</sup> of foreign sources of valuation.

The report concluded that the Commission fully realized the expense and difficulties involved in changing a Customs system which had been in operation for the past one hundred years. But it was also held that "this would naturally be true of any substantial change in the appraisal system."<sup>15</sup>

With the testimony of the Hearings as well as the Tariff Commission's Report as guides, the Ways and Means

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14. U.S. Tariff Commission, American Valuation (Government Printing Office, Washington, 1921), p.5.

15. Ibid., pp.6,38.



1. The first part of the paper is devoted to the study of the properties of the function  $f(x)$  defined by the equation

$$f(x) = \int_0^x \frac{1}{1+t^2} dt$$

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Committee wrote Section 402 providing for a complete change to the American valuation basis. The Bill passed the House on July 21, 1921, minus any alterations in the valuation section as originally drafted by the Committee.

Hearings on the House bill were begun by the Senate Finance Committee on July 25, 1921 and were conducted January 9, 1922. The arguments heard were largely those given in the hearings before the House Committee, slightly different in wording but essentially the same in contents.

In addition to the testimony, four amendments to the Tariff Bill were submitted to the Finance Committee by Mr. Smoot of Utah. Two of them, to quote Mr. Smoot's words: "provide for the so-called American valuation in a different form from that provided in the House Bill." <sup>16</sup> When the Committee eventually submitted the revised House Bill to the Senate, the influence of Mr. Smoot's amendments was visibly evident.

In brief, the Smoot amendments as incorporated into the Finance Committee's revised House bill, provided in section 315 that if any rate contained in the Act was

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16. 62 Congressional Record, 67th Congress, 2nd Session, Part I, p. 36.

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found not to equalize conditions of competition here and abroad, the President, after an investigation, was to have the power to change the dutiable base to the "American selling price" provided he did not, in addition, change the rate in the Act by more than 50 percent in either direction. Underlying this new bill was President Harding's appeal in December, 1921, for a flexible tariff to deal with changing economic conditions without waiting for Congress to act.

With the exception of minor changes in wording, the Finance Committee's revised House bill, which included the Smoot provisions for "American valuation", was finally passed by the Senate in September, 1922, and three days later the President signed the bill.

The Tariff Act of 1922, therefore, provided definite encouragement to those advocating the adoption of the American valuation plan. In paragraphs 27 and 28 of the finally enacted bill, the "American selling price" is to be and has been the basis used, at all times, for the assessment of duties upon the exhaustive list of coal tar products there enumerated. And in section 315 (336 of Tariff Act of 1930) the "American selling price" can be adopted by the President as the dutiable base in all cases where he determines that an increase of 50 percent on the foreign value will not equalize costs of produc-





tion in the United States and the principal competing foreign country. This latter provision makes potential, at least, the ultimate application of the American valuation plan to all imports dutiable in whole or in part upon their value under the conditions specified in the section.

The question of American valuation in the tariff revision of 1929-1930 received, relatively, less consideration than was the case in 1921-1922, and yet it lost none of the ground gained in the 1922 Act. Insofar as American valuation is concerned, the wording of sections 336 and 402 of the Hawley Smoot Act are somewhat different from the comparable sections in the Tariff Act of 1922; nevertheless, the essential features governing valuation are fundamentally the same.

#### THE DEMAND FOR A SCIENTIFIC TARIFF

Post World War I conditions involved among other things depreciated currencies and a general chaos in the industries of Europe. Some of these industries were dormant while others had been overstimulated by war demands. No reliable data were available for determining whether a given rate was "right" and if "right" today whether it would be right tomorrow. In the belief that an adequate rate should exist that would apply at all times and under



all conditions, the ideas of a flexible tariff developed.

The concept of flexibility was first brought to public attention by President Harding in his message on December 6, 1921. His opinion of the problem was as follows:

"I hope a way will be found to make for flexibility and elasticity, so that rates may be adjusted to meet unusual and changing conditions which cannot be accurately anticipated. I know of no manner in which to effect this flexibility other than the extension of the powers of the Tariff Commission, so that it can adapt itself to a scientific and wholly just administration of the law.

"I am not unmindful of the constitutional difficulties. These can be met by giving authority to the Chief Executive, who could proclaim additional duties to meet conditions which the Congress may designate.

"The grant of authority to proclaim would necessarily bring the Tariff Commission into new and enlarged activities, because no Executive could discharge such a duty except upon the information acquired and recommendations made by this Commission. But the plan is feasible, and the proper functioning of the board would give us a better administration of a defined policy than ever can be made possible by tariff duties prescribed without flexibility.

"In this proposed flexibility, authorizing increases to meet conditions so likely to change, there should also be a provision for decreases. A rate may be just today and entirely out of proportion six months from today. If our tariffs are to be made equitable, and not necessarily burden our imports and hinder our trade abroad, frequent adjustments will be necessary for years to come. Knowing the impossibility of modification by act of Congress for anyone or a score of lines without involving a long array of schedules, I think we shall go a long way towards stabilization, if





there is recognition of the Tariff Commission's fitness to recommend urgent changes by proclamation." 17

In the above words, the President boldly faced the crux of the problem; namely, the demand for some kind of a scientific or flexible tariff which would be capable of adjusting tariff duties to the constantly fluctuating economic conditions so prevalent during the post war periods. A flexible tariff seemed to be the only answer unless Congress would be willing to undertake the time consuming process of frequent tariff revisions until such time as world economic stability was recovered.

With respect to the flexible tariff concept, both major political parties were in general agreement as to the principle on which a rate should be based. The principle itself is that a domestic producer shall not be at a disadvantage in meeting foreign competition; and it seemed to the Republicans that this end could not be obtained by adding a sufficient duty to the foreign cost of production to make it equal to the domestic cost of production.

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17. U.S. Tariff Commission, Sixth Annual Report (Government Printing Office, Washington, 1922) pp. 1-2.





### COST OF PRODUCTION

According to the late Professor F. W. Taussig, the principle of having tariff rates equalize differences in foreign and domestic costs was originally advocated by the Republican Party platform of 1904 which stated that "the measure of protection should always at least equal<sup>18</sup> the difference in cost of production at home and abroad." This concept was finally realized with the passage of the Tariff Act of 1909 which provided the President with authority to "employ such persons as may be required" to secure the necessary information for determining whether other countries were discriminating against the commerce of the United States. In accordance with this measure, we noted earlier that President Taft created the Tariff Board whose duty it was to furnish comparative cost data for political authorities.

That the Board did furnish the President with some information on this subject is evidenced by the following letter written by President Taft from Beverly, Mass., August 20, 1910, to the Chairman of the National Congressional Committee:

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18. Frank W. Taussig, The Tariff History of the United States (G.P. Putnam's Sons, New York and London, 1888) 8th edition, p. 363.



"The difficulty in fixing the proper tariff rates in accord with the principle stated in the Republican platform is in securing reliable evidence as to the difference between the cost of production at home and the cost of production abroad. The bias of the manufacturer seeking protection and of the importer opposing it weakens the weight of their testimony. Moreover, when we understand that the cost of production varies in one country abroad from that in another and that it changes from year to year and from month to month, we must realize that the precise difference in cost of production sought for is not capable of definite ascertainment and that all that even the most scientific person can do in his investigation is, after consideration of many facts which he learns, to exercise his best judgment in reaching a conclusion." 19

Briefly, President Taft implies in the above letter that the "cost of production" clause of Section 315 is of limited value due to its inherent difficulties; nevertheless, the use of the "cost of production" principle has remained. In fact, as was noted in the third chapter, after the elimination of the Tariff Board by the Democrats in 1912, they retained the cost of production division in the Department of Commerce. With the establishment of the present Tariff Commission the cost of production division was transferred to the Commission where it now exists. As a matter of fact, one of the principle functions of the Tariff Commission is the investigations concerning comparative production costs.

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19. Larkin, op.cit., p. 70.





One may ask whether differences in the cost of production between nations is a justifiable standard for levying tariff rates? Professor F. W. Taussig maintains that -

"as a solution of the tariff question, this much paraded true principle is worthless; and if applied with consistency, it would lead to the complete annihilation of foreign trade. If the duty is made high enough - and on this principle you must make the duty high enough - almost everything in the world can be produced in the United States." 20

Of course, many advocates of the "equalizing rate" principle maintain that it shouldn't be carried to such extremes; whereas the more ardent proponents such as the former Senator Aldrich of Montana hold that -

"if it costs ten cents to produce a razor in Germany and twenty cents in the United States, it will require a 100 percent duty to equalize the conditions in the two countries....As far as I am concerned, I shall have no hesitancy in voting for a duty which will equalize conditions....If it were necessary to equalize the conditions and to give the American producer a fair chance for competition, other things being equal of course, I would vote for a three hundred percent duty as cheerfully as I would for fifty." 21

Professor Taussig's answer to the above theory is that "the government would give the domestic producer all he needs for equalization...and the necessary consequence

20. Frank W. Taussig, Free Trade, the Tariff and Reciprocity (New York, The Macmillan Co., 1920) p. 136.

21. Ibid., p.



is universal and unlimited protection."<sup>22</sup>

The problem of cost, however, is one of those difficult matters of investigation, none of whose factors are constant. Money cost is only one of the determinants of production, and production, in turn, is a determinant of money costs. A certain amount of a commodity can frequently be produced at a given unit cost, but to double the production would largely increase the unit cost. Neither of these factors, the amount produced, or the cost, is constant with respect to the other. Since the varying factors of cost and production so intimately react one upon the other, production influencing cost and cost influencing production, one cannot strictly speak of cost of production as one would speak, for example, of the heating units of a grade of coal, or the nutritive value of various foods. One can as well speak of the production cost (i.e., quantity produced at a specified cost) as of the cost of production. Since there are two interworking factors, therefore, both cost and production, and not one factor constant with respect to the other, the proper object of study may be said to be cost and production rather than strictly cost of produc-

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22. Ibid., p. 137.



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tion.

Production of goods and services in international trade must be studied in its relation to natural resources, labor supply, labor efficiency, social and sanitary conditions, and these related in turn to money costs. Costs under various conditions and extensions of the industry and with respect especially to prices, should be investigated and related, in turn, to the more technical and social factors of production.

With the passage of the Tariff Act of 1922, the general consensus of opinion was that at last we had a real scientific tariff to solve the frequent and cumbersome problems inherent in tariff revision. Our legislatures had framed what seemed at first to be an ideal solution. However, with the passing of time the task of interpreting the vague language of section 315, as well as the practical application of the things to be taken into consideration, posed insurmountable administrative difficulties to the Tariff Commission. In the following chapter we shall discuss in detail the administrative problems encountered in the Tariff Commission's attempt to apply the provisions of section 315 to individual commodity investigations.

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23. Dictionary of Tariff Information, United States Tariff Commission, (Government Printing Office, Washington, D.C. 1924) pp.188-189.





### RESULTS OF THE FLEXIBLE TARIFF

When the Tariff Act of 1922 was passed, the expectation was that the flexible provision would be used to lower rates rather than increase them. The unsettled conditions of Europe made American producers unusually apprehensive of destructive competition; hence the effort had been to be on the safe side and make the rate too high rather than too low. During the progress of the debate on the flexible provision, Senator Smoot had said:

"If the President is given this power I think there will be many, many more occasions when he will exercise it in lowering rates than in raising them; in fact, if the conditions became normal, I expect the President of the United States to lower, I was going to say, the majority of the rates." 24

Even President Harding himself, the prime mover for a flexible tariff, looked forward to a reduction of rates as well as increases. I repeat in part what he said in his message to Congress on December 6, 1921:

"In this proposed flexibility, authorizing increases to meet conditions so likely to change, there should also be provisions for decreases." 25

The records show that the results of the flexible

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24. 62 Congressional Record, 67th Congress, August 10, 1922, pp.11192-11193.

25. U.S. Tariff Commission, Sixth Annual Report, op.cit., p.2.



tariff have been entirely different from those desires for low rates expressed above. In the twelfth annual report of the United States Tariff Commission published in 1928, it was stated that out of the 28 commodities on which action had been taken by the Commission, all but five had been granted substantial increases in the rates of duty - the increase in all but four cases attaining the limit of 50 percent. The articles receiving an increase included such important commodities as wheat, flour, straw hats, butter, and pig iron.

The articles receiving a decrease were relatively unimportant. They were mill feeds, bobwhite quail,<sup>26</sup> paint brush handles, cresylic acid, and phenol.

Despite the disappointing results of the operation of section 315, the idea of a scientific tariff was continued in section 336 of the Tariff Act of 1930.

In the seventeen months following the passage of the 1930 Tariff Act, thirty-seven reports were handed to the President by the Tariff Commission, which is but one fewer than the number handed him in the eight years during which section 315 was in effect.

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26. U.S. Tariff Commission, Twelfth Annual Report (Government Printing Office, Washington, 1928), pp.1-2.





Such increased results can be accounted for in part by the facility gained by the Commission in the administration of section 315. Of the thirty-seven reports submitted to the President up to the end of November, 1931, he has proclaimed duty increases as recommended by the Commission in five cases, and duty decreases in eleven cases. In seventeen cases he has agreed to the Commission's finding that no duty changes were necessary. In the remaining four cases, two provided for decreases in part, no change for the rest; one for a decrease in part; an increase in part, and no change for the remainder; and one for an increase in part and no change in the rest.<sup>27</sup>

In spite of the changes made in section 336 and the subsequent relative increase in the number of Presidential proclamations flowing from the section, the same underlying weakness continues to prevail in the flexible provisions. It is true that in the Commission's reports submitted to the President since the passage of the Tariff Act of 1930, he hasn't possessed the power to proclaim any change other than the one recommended by the Commis-

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27. U.S. Tariff Commission, Fifteenth Annual Report (Government Printing Office, Washington, 1931), pp.91-96.



sion; nevertheless, he continues to hold the balance of power.

In the light of what was mentioned in the second chapter concerning political incidents and influence over the Tariff Commission, it would be naive on our part if we were to believe that politics have ever been removed from Tariff. Instead of taking the tariff out of politics, history shows that the effect of section 315 was to inject politics into the tariff.

So far, we have seen how the flexible provision operates for the benefit of certain groups by automatically tending towards higher rates by virtue of the wording of the law.

Therefore, the conclusion is inevitable that the flexible provisions in United States tariff policy have not provided a tariff making arrangement that is either free from politics or scientific. The overall result has been the placing of increased control over the administration of the United States Tariff in the hands of a few rather than under the jurisdiction of Congress where it rightly belongs.



## CHAPTER VI

ADMINISTRATIVE PROBLEMS IN ADJUSTING  
TARIFF RATES

It is only natural to assume that in the administration of laws, difficulties will be encountered. The operation of Section 315 proved to be no exception in these respects, and several fundamental difficulties were experienced at an early date. Like any law, the Tariff Act of 1922 was by no means a perfect piece of legislation; in fact, there were no previous precedents to guide Congress in the framing of that legislation which developed around the "equalizing rate principle."

Of the numerous administrative problems encountered in the investigations, the Tariff Commission saw fit to classify these individual problems. The most recent classification, which is published in the Thirteenth Annual Report of the United States Tariff Commission, is as follows:

- a) Determining the principal competing country.
- b) Securing domestic and foreign costs of production.
- c) Determining the comparability of domestic and foreign costs.



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d) Determining the principal market or markets in the United States where such costs were to be equalized.

e) Transportation costs.

In addition to the relative merits of the "equalizing rate principle" there still exists the classified problems which have confronted the smooth functioning of the administrative tariff machinery. I shall now attempt to analyze those administrative problems in detail, placing special emphasis upon specific investigations.

#### DETERMINING THE PRINCIPAL COMPETING COUNTRY

In numerous investigations, the United States Tariff Commission has run across almost insurmountable difficulties in deciding the principal competing country. The task is of a very difficult nature, for it is not only hard to discover the direct source of competition, but once discovered, this principle source may shift amongst various countries during the period of investigation.

An example of such a situation is manifested in the "Butter" investigation. In this particular investigation, cost data were secured for the farm accounting year 1923-1924, when Denmark was found to be the chief competing country. However, before the war, it was found that imports from Canada exceeded all others, but that from 1920 to 1924, these had decreased both relatively



and absolutely, while those from Denmark had shown a marked increase. In 1925, Denmark fell to a third place after Canada and New Zealand, respectively.

The majority of the Commission favored the selection of Denmark holding that its imports entered "en masse" into the chief butter market of New York, and thus furnished a competitive impact which was not present in the case of Canadian butter, which entered the United States at many places widely scattered over the entire border. Finally, they held that the Danish imports were of a uniformly high grade, were easily marketable, and that their price was the price to which practically all the other butter in the New York market adjusted itself.

Vice-Chairman Dennis dissented from the majority report. He held that even though Denmark was the principal source of imports in the year for which costs were collected, that in the later year of 1925 Denmark's loss of first place was due to its recovery of the German market, which had been in chaos in 1923, and which, in turn, had forced it to resort to increased shipments to the United States. He felt the 1925 conditions were indicative of the future, wherein the industrial and nearby markets of England and Germany would serve to take an ever-increasing share of the Danish product. Thus, the American market would be of diminishing importance.





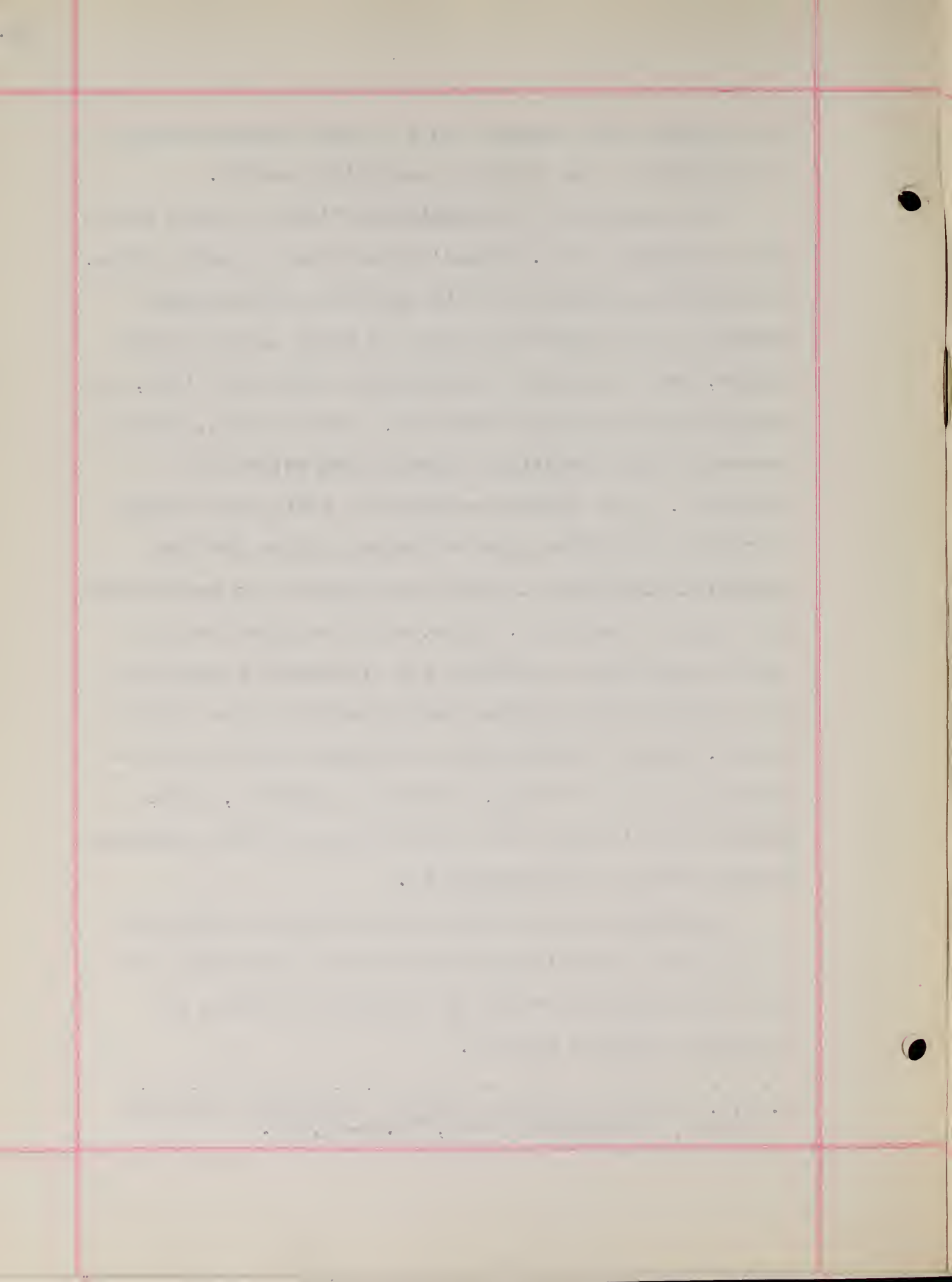
He concluded that Denmark was no longer either actually or potentially the principal competing country.

The majority of the Commission filed a second statement in answer to Mr. Dennis' objections to their choice, in which they pointed out his failure to give proper regard to the concentration in the entry of the Danish butter, and to note the abnormality of the year 1925, in which imports from all countries, except Canada, had decreased, while domestic production had materially increased. They further pointed out that modern transportation facilities provided refrigeration for the successful carriage of perishable products to practically all parts of the world. Also, with the growth of imperial preference, important and increasing competition was already being afforded Danish butter in the British market. This, together with the tariff placed upon imported butter by Germany, effective October 1, 1925, would likely increase the attractiveness of the American market instead of decreasing it.

The final say on which country should be selected as the chief competitor rested with the President; and in his proclamation changing the duty on butter, he  
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designated Denmark as such.

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1. U.S. Tariff Commission, Butter (Government Printing Office, Washington, 1926), pp.13-79,142.



In the investigation upon Cresylic acid, Phenol, and Fluorspar, which can be considered together, the method employed in choosing the principal competitor was similar to that used in the butter investigation. In all of these products, England had been the chief supplier for a great number of years; however, in each case, she was surpassed by another country in 1926, the year of extensive and crippling coal strikes in Great Britain. Since the first two items were by-products of coal, it was foreseen that Britain would regain her dominant position with the termination of the strikes. As for the third product, the maximum duty was required regardless of whether British or German costs were selected. It was finally decided in all three cases that Great Britain was the principal competing country. The decision was based upon the feeling that under "normal conditions" that country would be the principal exporter.<sup>2</sup>

A somewhat similar situation existed in the "Linseed Oil" investigation. It was shown that between 1919 to 1925, the greatest amounts of imports had been received from the United Kingdom. Subsequent to 1925,

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2. U.S. Tariff Commission, Cresylic Acid (Government Printing Office, Washington, 1927), pp.5-16; Phenol (1928), p.5; Fluorspar (1928) p.18.

1. The first part of the report deals with the general situation of the country and the position of the various groups of the population.

2. The second part of the report deals with the economic situation of the country and the position of the various groups of the population.

3. The third part of the report deals with the social situation of the country and the position of the various groups of the population.

4. The fourth part of the report deals with the cultural situation of the country and the position of the various groups of the population.

5. The fifth part of the report deals with the political situation of the country and the position of the various groups of the population.

6. The sixth part of the report deals with the international situation of the country and the position of the various groups of the population.

7. The seventh part of the report deals with the future of the country and the position of the various groups of the population.

8. The eighth part of the report deals with the conclusion of the report and the position of the various groups of the population.

9. The ninth part of the report deals with the appendix of the report and the position of the various groups of the population.

Dutch imports had gradually replaced those of the United Kingdom. The Commission reported that -

"in the Netherlands, production and net exports of linseed oil have increased, whereas in the United Kingdom, production and net exports of linseed oil have decreased. This lends support to the belief that the Netherlands will continue to be the chief source of linseed oil into the United States. The Netherlands is taken as the chief competing country for the purposes of this investigation." 3

Concerning the policy pursued in solving the difficulties of "determining the principal competing country," a generalization can be reduced. In those cases where the principal competing country fluctuated on a yearly or other basis, the Commission apparently established a definite policy of selecting the country which, in their opinion, would be the principal competitor with the United States under normal long run conditions.

#### SECURING DOMESTIC AND FOREIGN COSTS OF PRODUCTION

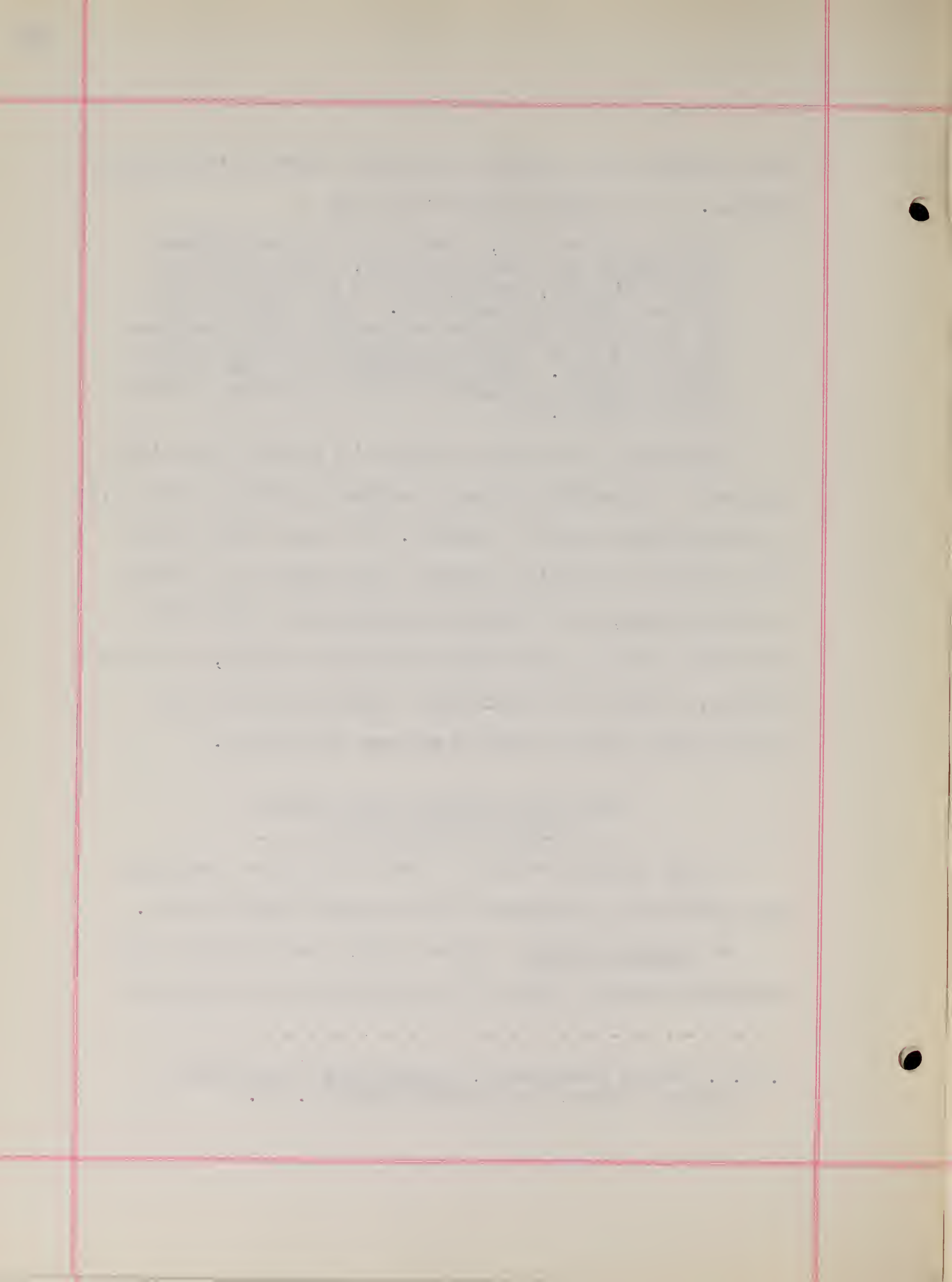
In the administration of this particular problem, the Commission encountered its greatest difficulties.

a) Domestic Costs: Since 1922, the Commission has obtained domestic costs of production in all investiga-

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3. U.S. Tariff Commission, Linseed Oil (Government Printing Office, Washington, 1929) p. 12.





tions, but such a task has proved a very expensive and time-consuming one. Most firms keep financial records, but not many maintain a cost accounting system in which adequate costs are proportioned amongst the individual products. As a result, the accounting division of the Commission has found it necessary to analyze all available information, work out cost statements, and segregate or allocate the cost data for the particular product or products under investigation. In following this procedure, commodities were classified according to either manufactured goods or agricultural products.

The most important information required, yet the most difficult to obtain, was that of joint costs or by-product costs.<sup>4</sup> It was discovered that the cost records of most producers cover their entire output irrespective of particular articles or specified grades in circumstances where a variety of articles and grades are produced.

Where there are a number of products resulting from practically the same process, the practice of apportioning joint costs in the ratio of receipts has come to be

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4. U.S. Tariff Commission, Thirteenth Annual Report (Government Printing Office, Washington, D.C., 1929), pp.37-42.



quite common. This is simple enough and, on its face, seems an apt solution. As the tariff commission's Chief Investigator, Mr. Comer, illustrates it in this way:

"If three joint products cost \$20 and one of them sells for \$10, another for \$7.50 and the third for \$5, the cost of all of them is distributed to each product in the ratio of \$10, \$7.50 and \$5.<sup>5</sup> But a consistent application of this principle may lead to some curious results in the adjustment of tariff rates. For example (Mr. Comer points out), suppose the cost of raising sheep is assigned to wool and mutton in proportion to the receipts from each. It is quite conceivable that little or no mutton is being imported and that, hence, the duty on mutton in no way affects its price. Wool, on the other hand, is being imported and the duty does increase its price. The increased price brings increased receipts; and if costs are allocated in the ratio of receipts the cost of producing wool will appear to be increased, and in order to equalize foreign and domestic costs the duty will have to be still further increased. Each increase in duty, therefore, necessitates a still further increase, and so on until the price becomes prohibitory and the

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5. Comer, George P., Tariff Review, August 1929, p. 237.

1. The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present and for the development of a sound policy for the future. The author points out that the study of history is not only a means of acquiring knowledge, but also a means of developing the ability to think critically and to make sound judgments.

2. The second part of the paper discusses the role of the individual in the history of the United States. It is argued that the actions of individuals have played a major role in the development of the country, and that it is important to study the lives of the great men and women of the past in order to learn from their experiences and to apply their lessons to the present.

3. The third part of the paper discusses the role of the government in the history of the United States. It is argued that the government has played a major role in the development of the country, and that it is important to study the actions of the government in order to learn from its mistakes and to improve its performance in the future.

4. The fourth part of the paper discusses the role of the people in the history of the United States. It is argued that the actions of the people have played a major role in the development of the country, and that it is important to study the actions of the people in order to learn from their experiences and to apply their lessons to the present.

5. The fifth part of the paper discusses the role of the future in the history of the United States. It is argued that the future is a time of great opportunity and challenge, and that it is important to study the history of the United States in order to prepare for the future and to make the most of the opportunities that it offers.



duty increases no longer affect it. A protectionist would reply to this by using as an example a joint-cost article, the price of which is being depressed by imports. Quite obviously the more the price is depressed the less would be the cost-allotment under this system and, therefore, the less would be the protection afforded. Consequently, the practice of allocating costs according to price receipts may vitiate rather than effectuate the cost-equalization plan.

Investigation of the cost of producing farm products involved additional problems. Ordinarily, the average farmer doesn't keep accurate cost records because the task of allocating charges against the hired man, his horses, or even himself, necessarily must be one of estimation. While -

"cost of production is by definition an exact and mathematical term, and to obtain it required a careful examination of cost records prepared and interpreted under rules of economics and cost accounting." 6

All of the obstacles enumerated above, and many others, definitely hinder the obtaining of cost of production data of domestic industries; and they are magnified to a greater degree under conditions of foreign

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6. U.S. Tariff Commission, Thirteenth Annual Report (Government Printing Office, Washington, 1929) p.

1. The first part of the paper discusses the importance of maintaining accurate records of all transactions. This is essential for the proper management of the company's finances and for ensuring compliance with applicable laws and regulations. The second part of the paper describes the various methods used to collect and analyze data, including interviews, surveys, and focus groups. The third part of the paper presents the results of the study, which show that there is a significant correlation between the use of accurate records and the success of the company.

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business methods and languages.

b) Foreign Costs: In its investigations, the Commission has invariably discovered from experience that foreign producers are generally courteous and not too antagonistic upon being requested to reveal figures concerning their competitive situation. Of course, there were some cases of opposition which necessitated the Commission's resorting to secondary sources in order to obtain foreign cost figures. The following classification shows the results in tabular form of the Commission's investigations into foreign cost of production data.

<u>Foreign cost data obtained</u>	<u>Investigations</u>
1. Foreign cost data obtained and verified.....	46
2. Statements of foreign costs obtained but not verified .....	2
3. Costs calculated from collateral information, including prices, wages, etc. ....	<u>1</u>
Total number of investigations in which cost data have been obtained..	49

Invoice Prices Used:

Invoice prices used either because of objections raised by foreign governments or because of refusal by foreign producers..... 9



No attempt made to secure foreign costs data either because other information available to the Commission made it unnecessary, or because the Commission had reasons to believe that foreign cost data could not be obtained.....	12
Total number of investigations in which invoice prices have been used.....	21
Investigations which have been suspended or have not reached the stage where foreign cost data have been attempted...	12
Total investigations ordered by the Commission for purposes of Section 315.....	7 82

In the event that the Commission's agents were refused foreign cost data, the problem arose as to the alternative sources that might be employed. In answering this problem, the Commission resorted to invoice prices as a fair measure of foreign costs. The "Oxalic Acid" investigation was the first instance in which invoice prices were used. Such prices showed that the difference between domestic costs and German invoice prices was sufficiently great to warrant a maximum increase in duty. Although these prices contained an element of profit, the divergence was so great that it was considered unnecessary to accurately figure German costs.

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7. Ibid., p. 18.

8. U.S. Tariff Commission, Oxalic Acid (Government Printing Office, Washington, 1925), pp.4-5.





In the "Pig-Iron" investigation, the Commission immediately chose the invoice prices of Indian pig-iron without even attempting to investigate actual costs of production. The explanation of the Commission's action was identical to their reasoning in the oxalic acid investigation; they maintained that the spread between the average foreign invoice price and the average domestic cost was greater than could be equalized by a maximum increase in the duty.

Commissioner Costigan objected to the procedure and held that the Commission, in departing from its established practice of securing first hand, itemized costs, and in resorting to interference and secondary evidence for the foreign cost figure, must have either desired to test the legality of the method used or to practice economy. He cited the case of the pig-iron as typical of the direct change in the Commission's policy. Mr. Costigan pointed out that the Commission's report had failed to investigate foreign costs as directed by section 315, but instead, had inferred such costs from invoice prices. Whereas invoice prices inherently fail to satisfy the statute because of the element of profit contained therein and their facility for falsification by governments desiring preferential relations with another, or by collusion on the part of importers and



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exporters.

Finally, the question of whether or not invoice prices should be used as evidences of costs was settled in the investigation on rag rugs. In this case, as in the two previously mentioned, the Commission used invoice prices rather than collecting Japanese costs. Likewise, the maximum duty was required under this procedure.

The President received the Commission's Report on June 11, 1927, but it wasn't until February 12, 1928, when he took final action on the findings. This delay can be primarily attributed to the President's uncertainty concerning the use of invoice prices. The whole matter was submitted to the Attorney General for his opinion. On October 19, 1927, the Attorney General rendered the following opinion:

"that under the provisions of this statute (Section 315, Tariff Act of 1922) the President may refrain from taking into consideration wages, cost of materials, and other items of production in competing foreign countries usually ascertainable by direct inquiry or field work where he finds that such an inquiry is impracticable in the sense of being futile. It is obvious that a field inquiry in Japan, developing more accurate information as to the cost of production there, would not affect the result in this particular case unless it disclosed that the cost of production in Japan is higher than the invoice prices of Japanese rugs.

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9. U.S. Tariff Commission, Iron in Pigs (Government Printing Office, Washington, 1927), pp.29 - 36.





In other words, a field inquiry abroad as to wages, costs of materials, and other items of cost of foreign production would be impracticable, in the sense of being useless, unless foreign costs are higher than the invoice prices of imported rugs." 10

The Attorney General was also of the opinion that although the use of invoice prices would tend to lessen the friction created by direct examination of the books of foreign producers, they are deficient in an investigation where the full statutory increase or decrease of duty is not warranted by the cost comparison. 11

The President then proclaimed a duty change based upon the above legal opinion and the report of the majority of the Commission which had used invoice prices as evidence of foreign costs of production. 12

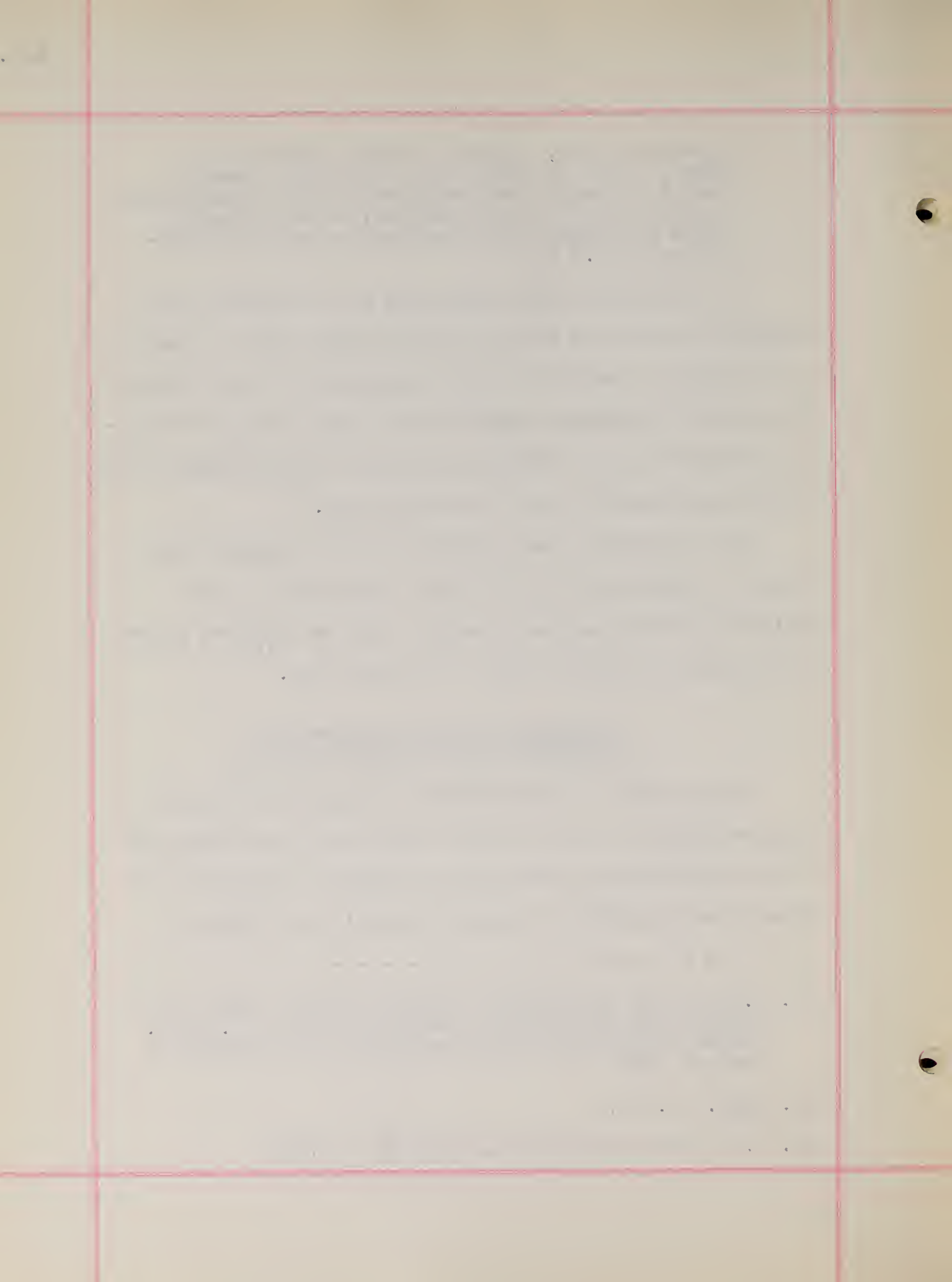
#### DETERMINING THE COMPARABILITY OF DOMESTIC AND IMPORTED PRODUCTS

Another one of the difficult problems confronting Commissioners in attempting to carry out the administrative provisions of Section 315 is that of comparing the foreign and domestic costs of production of "like or

10. U.S. Tariff Commission, Eleventh Annual Report (Government Printing Office, Washington, 1927) pp. 11-13. (Refer to definition and explanation of dumping in Chapter VII).

11. Ibid., p. 13.

12. U.S. Tariff Commission, Rag Rugs, op.cit.



similar" goods for the purpose of establishing a uniform quality. It very frequently happens that a foreign product which is normally considered similar to and in competition with a domestic article may be different in kind and quality to the latter item.

The linseed oil investigation furnishes one particular aspect of the problem. The Commission deemed it necessary to confine the investigation to crude linseed oil, since that particular grade of oil was practically the only type imported, and it was further found that both the imported and domestic crude linseed oils were<sup>13</sup> of the same quality and grade.

In the "Taximeter" investigation, the Commission found that four domestic establishments produced taximeters, but only two of the four manufacturers produced taximeters closely comparable to the imported "Argo" taximeters made in Germany. Therefore, the Commission took only the cost of the two companies whose product was similar in construction and service to the foreign<sup>14</sup> product.

A somewhat similar situation existed in the "gold

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13. U.S. Tariff Commission, Linseed Oil, op.cit., p.2.

14. U.S. Tariff Commission, Taximeters (Government Printing Office, Washington) p. 4.



leaf" investigation. In this particular case, the Commission established comparability on the basis of use. The imported German leaf was found to be thinner, paler, and of less purity and metallic value than the domestic product. In spite of the lack of physical comparability, it was determined that both products were used interchangeably in the stamping of articles such as badges, pencils, hatbands, signs, as well as in the bookbinding processes. As a result, the Commission reported unanimously that the two products met in competition due to a direct trade or use comparability; the President accepted their findings.<sup>15</sup>

Another aspect of the problem was experienced in the "Print Roller" investigation. It was disclosed that the production of print-rollers in the United States was accomplished by two different methods: contract shop, and wall paper mill shops. The costs of the latter method were 33% greater than those of the former. The Commission excluded the high costs of the wall paper mill shops on the contention that Section 315 definitely stipulated "competitive costs." Upon further analysis

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 15. U.S. Tariff Commission, Gold Leaf (Government Printing Office, Washington, 1926) pp. 6-7.





of the paper mill shops, the Commission discovered that only two of them had excessive costs which in no way could be considered in the competitive field with the costs of the contract shops. Thus, the majority of the Commission reported to the President a cost difference which included all foreign producers and all domestic producers except the two especially high cost mill shops. Commissioner Costigan objected to that finding, and held that the average higher costs of the paper mills was sufficient evidence that they should all be excluded from cost consideration, in which event a decrease rather than an increase in the duty would be warranted. The President, however, accepted the findings of the majority of the Commission.<sup>16</sup>

In summing up the cases which have been studied under the third general classification, the following can be said: Whenever it was possible, costs were collected from all domestic producers of a given commodity which was comparable to the imported product. However, if only a certain portion of the total production of that commodity was similar to the foreign product, costs were restricted to only that portion producing the com-

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16. U.S. Tariff Commission, Print Rollers (Government Printing Office, 1926) pp.9-10.

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parable article. The competitive use of a product in satisfying domestic demand was resorted to as a basis when physical comparability was not possible. Finally, it was the Commission's policy not to take into account high cost producers, since their article was considered not to be competitive nor comparable with average or low cost producers.

DETERMINING THE PRINCIPAL MARKET  
OR MARKETS IN THE UNITED STATES

Still another major problem confronting the Tariff Commission was the selection of the principal market or markets to which transportation costs were to be figured for any given product in the United States. The primary difficulty in determining the principal market (or markets) was due to the variety of meanings attached to the term.

One interpretation maintains that the principal market or markets for purposes of Section 315 is considered to be the principal port of entry of the foreign product. Another point of view holds that the principal market or markets may be the one in which both the domestic and foreign article meet in competition in the largest quantities. Still another theory holds that the principal market or markets may be the chief consuming area or





areas, regardless of whether the product is of domestic or foreign origin.

Under this last interpretation one authority on the subject maintains that "Chicago, for example, would be the principal market for corn, wheat and hogs; Detroit for plate glass; New York for sugar, although imported corn may never reach Chicago, and domestic beet sugar may never reach New York."<sup>17</sup>

In the butter and cheese investigations, no explanation was offered by the Commission as to why they chose New York as the principal market. But in selecting New York for both the cresylic acid and phenol investigations the Commission stated that 90 percent of these products was sold along the Atlantic seaboard states; therefore,<sup>18</sup> they chose New York as the chief competing center. New York was likewise taken to be the principal market and the chief consuming center for domestic and foreign frozen eggs.<sup>19</sup>

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17. George P. Comer, Finding Cost Under the Flexible Tariff Provisions, Tariff Review, August 1929.

18. U.S. Tariff Commission, Cresylic Acid, op.cit., p.10; Phenol, op.cit., p.6.

19. U.S. Tariff Commission, Eggs and Egg Products (Government Printing Office, Washington, 1929) p.28.

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DEPARTMENT OF CHEMISTRY

PHYSICAL CHEMISTRY

LECTURE NOTES

BY

PROFESSOR

JOHN D. COLEMAN

CHICAGO, ILL.

1960

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In the paint brush handles case, Newark was chosen the chief competing center, and transportation rates for the three domestic and one Canadian producers were taken to that point.<sup>20</sup>

In solving this particular problem, it can be said that the Commission has followed a policy of selecting as the principal market or markets, that area which in their opinion was most practical after all conditions were analyzed.

#### TRANSPORTATION COSTS

The most bitter controversies that arose over the administration of Section 315 were waged over the problem of transportation costs as a necessary factor in cost of production estimates. Unfortunately, there was nothing specific in the Tariff Act of 1922 regarding transportation costs. The provision stated that "all other disadvantages or advantages in competition" should be considered in arriving at the final differences in costs of production. On account of the vagueness of the statute in this respect, there existed a difference of opinions amongst the members of the Tariff Commission with reference to its interpretation. It was readily recognized by

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20. U.S. Tariff Commission, Paint Brush Handles (Government Printing Office, Washington, 1926) pp.12-14, 18.



all, that by including transportation costs in the costs of producing an article, the importers would reap the advantages because the costs of transportation would contribute greatly toward equalization of costs without the levying of a duty.

Beginning with its first investigation, that on wheat and wheat products, which was submitted to the Chief Executive on March 4, 1924, the President followed the recommendations of those Commissioners who advocated the inclusion of the transportation charges in estimating the cost of putting Canadian wheat on the Buffalo market.

As was brought out in the investigation, the question revolved itself about the 3 cents (per hundred pounds) reduction on existing railroad rates for Canadian wheat moving to the Great Lakes region. Such preferential treatment was known as the Crow's Nest Pass Agreement; it was established in 1897 between the Dominion Government and the Canadian Pacific Railway. The reduction was granted in return for the land grants and the right to build the railroad through the Government owned Crow's Nest Pass between Lethbridge and British Columbia.

Commissioners Marvin, Glassie and Burgess objected to the inclusion of the three cent rate advantage in the cost of production. They maintained that it was not the intent of Congress to include transportation costs; and





they quoted Senator McCumber during the Congressional debate on the subject as saying that:

"In the authority to take into consideration matters which shall guide the President's judgment, we have left out of that consideration entirely the question of transportation. Of course, the question of transportation necessarily does figure in the question of competition, but no one wished to give the President the power to take every unimportant article that is produced in a section of the country so far distant that the freight itself would be many times what the article would be worth in the field of consumption under the ordinary tariff duties." 21

They further held that the omission of transportation costs by Congress was a deliberate action. They substantiated this argument by pointing out that the above statement of the Senator in charge of the bill was neither challenged nor contradicted.

On the other hand, Commissioners Culbertson, Lewis and Costigan advocated the inclusion of transportation costs; however, they referred to the 3 cent reduction as "what may be fairly regarded as, in effect, a bounty from the Canadian Government." 22 In proclaiming the duty change, the President acted favorably on the suggestion of the three latter Commissioners; nevertheless, he actually didn't settle the question of whether transpor-

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21. U.S. Tariff Commission, Wheat and Wheat Products,  
(Government Printing Office, Washington, 1924)  
pp.32-34.

22. Ibid., pp.42-43.



tation costs, which were not considered as bounties, should be included.

In the investigations concerning "Men's Sewed Straw Hats," the problem was not so easily eliminated. Shortly after the report of the investigation was presented to the President, he requested the Tariff Commission to prepare a detailed analysis of its reasons for and against the inclusion of transportation costs, as an aid in reaching his decision. Approximately one month later, the Commission's report was submitted to the President.

With reference to the reasons favoring the inclusion of such costs, the argument developed along the following pattern. It was held that Section 315 actually meant -

"that not only are technical production costs to be assembled, but also that in the fields of both production and commerce, transportation furnishes one of the conditions of production, and manifestly one of the advantages or disadvantages in competition which, not being excluded by any language of the subdivision or section, is necessarily embraced among the factors which, under that section, must be taken into consideration by the President." 23

In connection with the above reasoning, it was pointed out that the limitation of the President's power to raise or lower existing rates not greater than 50 per cent, as well as denying him the right to transfer a

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23. U.S. Tariff Commission, Transportation Costs and Costs of Production (Government Printing Office, Washington, 1926) pp.9-36.





commodity from the free list to the dutiable list, were explicit restrictions. Therefore, the absence of any specific clause regarding the inclusion or exclusion of transportation costs, may mean that the power in question continues to reside in the President under the sweeping<sup>24</sup> language of subdivision (c) of Section 315.

In further defense of the inclusion of transportation costs, several well known economists were consulted for their views on the subject. Some of their statements are listed as follows:

"The act of production can be reduced to the following three operations:

- 1) Changing the form of things or combining or rearranging them.
- 2) Changing their place.
- 3) Keeping them until such time as they are wanted; in other words production adds to the materials of nature, form or composition utility, time utility, and place utility." 25

"The creation of time and place utilities is as truly productive of wealth as the creation of elementary material utilities. Trade and transportation which deal with place utilities are no less productive than the activities expended in creating material utilities." 26

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24. Ibid.

25. Richard T. Ely, Outlines of Economics (New York: The Macmillan Co., 1917) p. 116.

26. Edwin R.A. Seligman, Principles of Economics (New York: Longmans, Green and Co. 1905) pp.275-276.



The arguments opposing the inclusion of transportation costs developed along the following pattern.

It was maintained that the phrase "cost of production" when employed in the normal sense did not imply the inclusion of transportation costs. In order to verify such a statement, a Supreme Court decision was quoted:

"No distinction is more popular to the common mind than that between manufacture and commerce. Manufacture is fashioning of raw materials into form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce." 27

Also, it was held, that although nothing definite concerning transportation costs was stated in subdivision (c) of Section 315, if such costs were to be included - how should they be applied? This lack of explicitness in the statute concerning application of transportation costs was ample evidence of the fact that Congress had no intention that anything should be done on such an important point. In substantiating this point, the report cited a detailed account of the Congressional debates placing special emphasis upon Senator McCumber's testimony, which was quoted previously in the wheat investigation.

Finally, the Commission's report was turned over to

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27. Kidd v. Pearson, 128 U.S. 1 (1888).

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the statistical analysis performed.

3. The third part of the document presents the results of the study. It includes a series of tables and graphs that illustrate the findings of the research. The data shows a clear trend of increasing activity over time.

4. The fourth part of the document discusses the implications of the findings. It suggests that the results have significant implications for the field of study and may lead to further research in this area.

5. The fifth part of the document concludes the study. It summarizes the main findings and provides a final statement on the importance of the research.

the Attorney General, requesting that he submit an opinion on the question to the President. On February 2, 1926, the Attorney General rendered his opinion, which stated among other things that -

"subdivision (c) of section 315 of the Tariff Act of 1922 provides that in ascertaining the costs of production...the President insofar as he finds it practicable, shall take into consideration

- 1) the differences in conditions of production, including wages, costs of materials, etc.
- 2) the differences in the wholesale selling prices of domestic and foreign articles in the principle markets of the United States.
- 3) advantages granted to a foreign producer or government, etc.
- 4) any other advantages or disadvantages in competition.

"If differences in transportation costs result in advantages or disadvantages, the President is directed to take such differences in transportation costs into consideration insofar as he finds it practicable to do so." 28

Approximately one week and one half after the delivery of the Attorney General's opinion, the President, in proclaiming the rate of duty for men's straw hats, included the transportation costs of Italian hats to the New York market.

Since the Attorney General's opinion, the Tariff Commission has generally followed the rule of including transportation costs in cost of production data. It is

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 28. Hearings before Select Senate Committee, op.cit., p.480.





also evident that the Chief Executive under the provisions of section 315 had more or less of a free hand in deciding upon the inclusion or exclusion of transportation costs until the passage of the Hawley Smoot Tariff Act of 1930 which definitely stipulated in subdivision (b) of section 336 the inclusion of transportation costs in computing cost of production data. But, prior to the passage of the Hawley Smoot Act, there was a variety of methods employed by the Commission in applying transportation costs. "However, in practice, the Commission did tend toward the acceptance of some system of weighting transportation costs."<sup>29</sup>

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29. Comer, op.cit., pp.237-239.



## CHAPTER VII

### ADMINISTRATIVE CONTROL OF FOREIGN TRADE PRACTICES

Generally speaking, a very potent argument has been advanced for the promotion of higher protective duties in the United States. The argument recognizes the necessity of offsetting, by means of a high tariff wall, unfair foreign competition, particularly predatory dumping. By convincing the American people on the patriotic issue of protecting the American standard of living, the result has been, from an administrative point of view at least, a gradual development in the last two decades of administrative legislation directed at the control of unjust foreign trade practices.

### DUMPING PRACTICES

Professor Viner has defined dumping as "price discrimination between national markets." This broad definition includes all price discrimination, whether in the different export markets or "reverse dumping" where the home market of the seller is made the dumping ground and the higher prices are charged to the purchasers in





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foreign countries.

It also includes "spurious dumping" which may not always be price discrimination, but rather a variation in credit terms, credit risks, grades of commodities, and price adjustment to the size of orders. There is also what is sometimes called "exchange dumping," or the depreciation of paper currency in order to put a premium on exports by causing export prices to be temporarily, if not permanently, low in terms of foreign currencies.<sup>2</sup> Freight dumping, or the granting of preferential rates to goods destined for export, or for a particular market, is not an uncommon practice in some countries. And "concealed dumping," or the maintenance of secrecy about export prices, is sometimes practiced through the use of commission merchants to whom goods are assigned for the purpose of obtaining the best prices possible. For official purposes, dumping has been defined as "the sale of imported merchandise at less than its prevailing market or wholesale price in the country of production."<sup>3</sup>

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1. Jacob Viner, Dumping: A Problem in International Trade (Chicago, 1923) pp.1-4, 7-8.
  2. Ibid., Chapter V.
  3. U.S. Tariff Commission, Information Concerning Dumping and Unfair Foreign Competition in the U.S. (Government Printing Office, Washington, 1919) p.9.

The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present. The author then proceeds to a detailed examination of the early years of the Republic, from the time of the signing of the Declaration of Independence to the end of the War of 1812. This section covers the political, social, and economic developments of the period, and the role of the various states in the formation of the new nation.

The second part of the paper deals with the period from 1812 to 1860. This was a time of great change and growth for the United States. The author discusses the expansion of the territory, the development of the economy, and the increasing influence of the federal government. He also touches upon the social and cultural changes that were taking place, and the growing tensions between the North and the South.

The third part of the paper covers the years from 1860 to 1890. This was the era of the Civil War and Reconstruction. The author examines the causes of the war, the course of the conflict, and the challenges of rebuilding the nation. He also discusses the social and economic changes that followed the war, and the role of the federal government in the process.

The fourth part of the paper deals with the period from 1890 to 1914. This was a time of rapid industrialization and urbanization. The author discusses the growth of the economy, the rise of the big business, and the social and cultural changes that were taking place. He also touches upon the political changes of the period, and the role of the federal government.

The fifth part of the paper covers the years from 1914 to 1945. This was the era of the World Wars. The author discusses the causes of the wars, the course of the conflicts, and the challenges of rebuilding the nation. He also discusses the social and economic changes that followed the wars, and the role of the federal government.

The sixth part of the paper deals with the period from 1945 to the present. This was a time of great change and growth for the United States. The author discusses the expansion of the territory, the development of the economy, and the increasing influence of the federal government. He also touches upon the social and cultural changes that were taking place, and the growing tensions between the North and the South.

In conclusion, the author argues that the study of the history of the United States is essential for a full understanding of the present. He encourages readers to continue to study the past, and to apply the lessons of history to the challenges of the future.

A classification of dumping practices according to motive and continuity as presented by Professor Viner<sup>4</sup> is summed up in the following table and paragraph.

<u>Motive</u>	<u>Continuity</u>
A) To dispose of casual overstock B) Unintentional	Sporadic
C) To maintain connections in a market in which prices are on remaining considerations unacceptable.	Short run or intermittent
D) To develop trade connections and buyer's good will in a new market. E) To eliminate competition in the market dumped upon. F) To forestall the development of competition in the market dumped upon. G) To retaliate against dumping in the reverse direction.	Short run or intermittent
H) To maintain full production from existing plant facilities without cutting domestic prices. I) To obtain the economies of larger scale production without cutting domestic prices. J) On purely mercantilistic grounds.	Long Run or continuous

A) In disposing of casual overstock, a producer has a choice of holding over, and probably incurring a greater expense and additional surplus, reducing his prices in his existing market and facing the difficulty

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4. Ibid., Chapter II.



in the future of trying to restore the price, or he may dispose of the surplus stocks in a new and distant market at whatever price he may be able to get - usually below his standard price.

B) Unintentional dumping occurs only when goods are exported in anticipation of their sale at a profitable price, and for some reason delivery cannot be made as prearranged.

C) It is sometimes necessary, in order to keep control of a particular market, to reduce the price below a profitable level.

D) The producer may sell at a reduced price in a new territory for the purpose of creating a market where none has existed. This has frequently been practiced by English merchants seeking to create markets in the colonies.

E) The most "malignant" type of dumping is that commonly referred to as predatory dumping. In this a concern seeks to eliminate its competitor from a particular field, or it seeks to force the competitor to accept its terms.

F) The dumping may be for the purpose of forestalling a potential competitive development.

G) It may be a retaliatory measure - i.e., the com-



1. The first part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting department in ensuring the integrity of the financial statements. It also highlights the need for regular audits and the importance of transparency in financial reporting.

2. The second part of the document outlines the various methods used to collect and analyze financial data, including the use of statistical models and the importance of data quality. It also discusses the challenges of data collection and the need for robust data management systems.

3. The third part of the document focuses on the importance of communication and collaboration between different departments in the organization. It emphasizes the need for clear communication channels and the importance of working together to achieve common goals.

4. The fourth part of the document discusses the importance of risk management and the need to identify and mitigate potential risks. It also highlights the importance of having a contingency plan in place to deal with unexpected events.

5. The fifth part of the document discusses the importance of innovation and the need to stay up-to-date with the latest trends in the industry. It also emphasizes the importance of having a strong research and development department.

6. The sixth part of the document discusses the importance of customer service and the need to provide high-quality products and services. It also highlights the importance of having a strong marketing and sales department.

7. The seventh part of the document discusses the importance of employee development and the need to provide training and development opportunities. It also emphasizes the importance of having a strong human resources department.

8. The eighth part of the document discusses the importance of environmental sustainability and the need to reduce the organization's carbon footprint. It also highlights the importance of having a strong environmental management system.

9. The ninth part of the document discusses the importance of social responsibility and the need to contribute to the community. It also emphasizes the importance of having a strong corporate social responsibility department.

10. The tenth part of the document discusses the importance of ethical behavior and the need to maintain high ethical standards. It also highlights the importance of having a strong ethics and compliance department.

pany which is confronting competition from a foreign concern which is dumping in its territory may dump in the territory of the other.

H) If a protected manufacturer is able to maintain a domestic price which is higher than that in foreign markets, he may be forced to accept a lower price for his exported goods. This has frequently been the position of American manufacturers who have sold in foreign markets at cheaper rates in order to keep their men employed and their works running.

I) Frequently the existing overhead expense of a factory, without much additional outlay, may be turned to a larger scale production, which will result in economies in unit costs which make possible expansion as under (D) or (H).

J) Dumping on mercantilistic grounds is a matter of national policy and is rarely done on private initiative. <sup>5</sup>

#### EARLY INSTANCES OF DUMPING IN UNITED STATES TARIFF HISTORY

The practice of dumping was first brought to the attention of our founding fathers when Alexander Hamilton, in his "Report on Manufactures," made mention of the fact-

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5. Ibid.

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"that certain nations grant bounties on the exportation of particular commodities to enable their own workmen to undersell and supplant all competitors in the countries to which these commodities were sent." 6

For approximately twenty years following the war of 1812, English manufacturers were continually being attacked for practicing predatory dumping in the United States. These charges were more or less substantiated by a chance remark in the House of Commons, April 9, 1816, which provided the necessary impetus to the then growing momentum of Hamiltonian protectionists. The English Parliament member, a Mr. Henry Brougham, in discussing the post war depression and general overproduction of goods, maintained that in disposing of the English surplus, his countrymen were compelled to turn to American markets -

"because ultimately the Americans will pay, which the exhausted state of the continent renders unlikely; and because it is well worth while to incur a loss upon the first exportation in order, by the glut, to stifle in the cradle those rising manufactures in the United States which the war had forced into existence contrary to the natural course of things." 7

As Professor Viner indicates, the primary purpose

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6. Frank W. Taussig, State Papers and Speeches on the Tariff, Harvard University, 1892, pp.31-32.

7. Ibid., pp.91-92.

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
JANUARY 1964

TO THE HONORABLE CHAIRMAN OF THE BOARD OF TRUSTEES  
OF THE UNIVERSITY OF CHICAGO  
FROM THE DEPARTMENT OF CHEMISTRY

Enclosed for the Board of Trustees are two copies of a report  
on the progress of the work of the Department of Chemistry  
during the year 1963. The report is divided into two parts,  
one dealing with the work of the department as a whole and  
the other with the work of the individual laboratories.  
The report is written in a summary fashion and is intended  
to provide a general overview of the work of the department.  
It is not intended to provide a detailed account of the work  
of the department or of the individual laboratories.

Very respectfully,  
J. H. DILLON  
Chairman, Department of Chemistry

Enclosed for the Board of Trustees are two copies of a report  
on the progress of the work of the Department of Chemistry  
during the year 1963. The report is divided into two parts,  
one dealing with the work of the department as a whole and  
the other with the work of the individual laboratories.



of the English was to render the infant industries of  
 America impotent.<sup>8</sup> And according to another authority  
 on the subject, the above words "have often since done  
 their duty in firing the protectionist heart."<sup>9</sup>

As time progressed the protectionist argument lost weight with the increasing importance of "cotton" as a factor in shaping national policy. The southern planters were opposed to any tariff barriers which might have repercussions on their export trade. From 1825 to the beginning of the Civil War, the manufacturers in the north experienced as much difficulty in maneuvering a high tariff through Congress as the farmers have since the Civil War in obtaining a low tariff.

From 1890 to 1914 German manufacturers were charged with excessive price discriminations in international markets. However, it is nearer the truth to say that producers of practically all countries of commercial importance have indulged in dumping as frequently and as much as the practice has proved profitable to them.

#### ANTI-DUMPING LEGISLATION

The growth of dumping practices during the last half

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 8. Viner, op.cit., pp.41-43.

9. Stanwood, op.cit., Vol.I, p. 168.



of the nineteenth century has resulted in a great degree of anti-dumping legislation since the beginning of the twentieth century. Dumping is practiced either on an unofficial (i.e., private) basis, or under a system of official bounties. I shall continue to discuss unofficial dumping practices against which the development of anti-dumping legislation has been primarily directed. (Official dumping practices are considered in the second part of this chapter.)

A move on the part of Congress to offset dumping and unfair competition by other means than protective duties culminated in the Revenue Act of 1916. Sections 800-801 of the Act make predatory dumping in the United States a criminal offense. Any importer who "commonly and systematically causes to be imported or sold... articles within the United States at a price substantially less than the actual market value is guilty of a misdemeanor and subject to a fine not to exceed \$5000 or imprisonment, not to exceed one year, or both; and any person injured by such unfair competition shall recover<sup>10</sup> threefold the damages sustained."

This anti-dumping provision failed to be an effec-

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10. Sections 800-801, Revenue Act of 1916.



tive remedy. The one who indulges in the unfair practice is usually the foreign exporter or manufacturer and not necessarily the American importer; therefore, the real offender is not within the jurisdiction of the United States Courts. It is not easy to determine, for purposes of enforcing a criminal statute, just when the price for imported goods is "substantially less" than the actual market value or wholesale price abroad. Since the law applied only to those who "commonly and systematically import foreign articles," it does not apply to those who do sporadic dumping. And the necessity of proving that such importation was made with the intent to injure, destroy or prevent the establishment of an industry in this country, or to monopolize trade, renders it virtually<sup>11</sup> useless as a criminal statute.

The failure of the first anti-dumping provision was followed by a move on the part of the U.S. Tariff Commission to investigate the anti-dumping provisions of other countries with the view to framing a more successful law for the United States. The direct result of the Commission's study was "Title II of the Emergency Tariff Act of 1921."

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11. U.S. Tariff Commission, Information Concerning Dumping and Unfair Trade Practices, op.cit., p. 33.



1. The first part of the paper is devoted to a general discussion of the problem.

2. The second part is devoted to a detailed analysis of the case of a single particle.

3. The third part is devoted to a detailed analysis of the case of a system of particles.

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27. The twenty-seventh part is devoted to a detailed analysis of the case of a system of particles.

28. The twenty-eighth part is devoted to a detailed analysis of the case of a system of particles.

29. The twenty-ninth part is devoted to a detailed analysis of the case of a system of particles.

30. The thirtieth part is devoted to a detailed analysis of the case of a system of particles.

By this act, the Secretary of the Treasury is given authority to add a dumping duty to the regular duty when he finds that the "purchase price" or the "exporter's<sup>12</sup> sale price" is less than the foreign market value.

The provisions of the act include goods on the free list as well as the dutiable:

"Whenever the Secretary of the Treasury after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise which is likely to be sold at less than its fair value, the Secretary shall make such findings public to the extent he deems necessary." 13

This part (Title II) of the Emergency Tariff Act of 1921, has been continued in an unaltered form in the Tariff Acts of 1922 and 1930. From an administrative point of view, the powers and duties at the discretion of the Secretary of the Treasury are identical in many respects to the President's authority outlined in Section 336 of the Tariff Act of 1930. In the President's case, an investigation by the Tariff Commission is definitely provided for, and public opinion is likely to be strong against the action of the President if he disregards the

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12. Section 203, 204, Tariff Act of 1921.

13. Section 201(a), Tariff Act of 1921.



Commission's advice and recommendations. The Secretary of the Treasury, however, is free to act upon whatever advice he may choose to accept and from whatever source he wishes. It is for him to decide whether he will accept the advice of private interests or others. It is for him to decide when an industry of the United States "is being or is likely to be injured." And it is for him to say what is "fair value."

With the Secretary of the Treasury being empowered to act at will, evidences of hasty action on his part were not lacking. In two Court cases involving reappraisement appeals against the arbitrary and unjustified action of the Secretary of the Treasury, the decision of the Customs Court restrained the Secretary from basing his accusations on insufficient facts.<sup>14</sup> Following such Court action, the use of administrative anti-dumping measures on the part of successive Secretaries of the Treasury has shown signs of more caution.

#### BOUNTY PRACTICES

Ordinarily in trade circles a bounty or subsidy is considered a contribution over and above the remission of

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14. Kleberg and Co. Inc. v. United States, 61 Treasury Decisions No. 2, January 14, 1932. Amtorg Trading Corp. v. United States, Treasury Decisions, March 31, 1932.





drawbacks and other domestic excise taxes. It is an official grant bestowed by a government as opposed to the previously discussed unofficial or private trade practices.

The practice of open and direct bounties commenced with the development of nationalism in the mercantilistic age.

By the payment of lump sums to certain industrialists, by the exemption from taxation, by the bestowal of gifts to individuals engaged in a rising industry, by annual pension, or by loans given without interest, it was hoped to build up a favorable trade advantage which would increase the gold supply of the nation. Such practices were not confined to a single nation. It was eventually realized that such a policy could not continue indefinitely without unfavorable repercussions. In fact, it became increasingly evident that competing countries began a similar system of bounties to develop their own export trade.

With the coming of the industrial age in the latter days of the nineteenth century, there were renewed demands for official aid to manufactures in the form of higher protective duties and, whenever possible, export subsidies.



The new system of export bounties was more indirect in that it was not open but included in legislation.

Professor Viner classifies these bounties as -

- "a) Refunds upon the export of commodities which have been subjected to internal excise taxation, of amounts in excess of the taxes which had actually been collected upon them.
- "b) Refunds upon the exports of goods manufactured from imported materials upon which imported duties had been imposed, of drawbacks of duty in excess of the amounts of import duties which had actually been collected upon the materials from which they were made.
- "c) Grants of drawbacks upon the export of goods made from materials of a kind subject to duty upon importation, even though the materials actually used in their manufacture or production were of domestic origin and not imported." 15

The methods of counteracting such official aid to exporters have varied from that of anti-bounty clauses in bilateral and multilateral treaties to bounty countervailing duties. It is this latter method that we are immediately interested in.

#### CONTROL THROUGH COUNTERVAILING DUTIES

The idea of combating bounties with countervailing duties originated with the United States Tariff Act of 1890, which introduced bounty countervailing duties as

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15. Viner, op.cit., pp.163-164.

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applicable to sugar. Nine years later the idea was continued in the Tariff Act of 1897 which provided for additional duties, equal to the amount of any bounty paid by a foreign country directly or indirectly, upon the exportation of goods to this country.

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The later Tariff Acts of the United States, and foreign countries as well, have contained similar provisions. It has become the accepted method of retaliation.

On the whole, countervailing duties which have been directed at retaliation against bounties have been effective. Even though they are rarely resorted to, the mere existence of the threat often accomplishes the purpose. In one of its annual reports, the United States Tariff Commission laid emphasis on the fact that it is only necessary to call the attention of foreign governments to the existence of bounty countervailing provisions in order to secure the abolition of export bounties. Perhaps one reason for the effectiveness of such a threat is the fact that some of these provisions can be very severe when actually applied. Under a ruling of the Treasury

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16. Section 237, Act of October 1, 1890.

17. Section 5, Tariff Act of July 24, 1897.



1. The first part of the paper discusses the importance of the study and the objectives of the research.

2. The second part of the paper describes the methodology used in the study, including the data collection and analysis techniques.

3. The third part of the paper presents the results of the study, which show a significant positive correlation between the variables.

4. The fourth part of the paper discusses the implications of the findings and provides recommendations for future research.

5. The fifth part of the paper concludes the study and summarizes the main findings.

6. The sixth part of the paper provides a list of references and acknowledges the contributions of the research team.

Department, a countervailing duty was imposed for a time on all the sugar imported from Denmark, while only one grade of the refined sugar was actually receiving an  
18  
export bounty.

Section 303 of the two most recent Tariff Acts provides that -

"whenever any country, dependency, person, partnership, association, cartel or corporation shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article...and such article or merchandise is dutiable under the provisions of this act, then upon the importation of any such article into the United States, there shall be imposed by this act, an additional duty equal to the net amount of each bounty or grant. The Secretary of the Treasury shall from time to time ascertain and determine, or estimate, the net amount of each bounty or grant."

With the language of Section 303 as it stands, a Secretary of the Treasury with a strong protectionist leaning could make a wide application of the bounty-countervailing provision if he so desired. In actual practice (as we indicated earlier in the chapter) the Treasury Department has used the discretion provided the Secretary rather cautiously following the two Customs Courts decisions in the matter. Undoubtedly such a policy is wise because if the United States should

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18. Viner, op.cit., p. 173.



start a rigid system of applying bounty-countervailing duties, and other countries should decide to apply similar countervailing measures to offset the advantage of the original export bounties, where would such commercial warfare end?

SECRETARY OF THE TREASURY  
V.  
THE PRESIDENT

From an administrative point of view, it appears that the duties and powers of the Secretary of the Treasury (which originated in the Emergency Tariff Act of 1921 and were repeated in Section 303 of the two most recent tariff acts) are similar in a great many respects to the President's control over the administration of the cost equalization formula outlined in the flexible provisions of the same two tariff laws. One of the principal provisions of the anti-dumping provisions that may be offered is that it provides no authorized agency or agencies for making investigations into cases of alleged dumping. The Secretary is not restricted to a definitely stated set of facts; he may act upon his own convictions, or he may act upon the advice of others. While the President may do much the same under Section 336 of the Tariff Act of 1930, still some investigation by the Tariff Commission is required.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry must be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

2. The second part outlines the procedures for handling discrepancies. If a discrepancy is identified, the first step is to double-check the original source documents. If the error is confirmed, it should be corrected immediately, and the reason for the error should be noted for future reference.

3. The third part describes the process for reconciling accounts. This involves comparing the internal records with the bank statements to ensure that all transactions are properly recorded and that the balances match. Any differences should be investigated and resolved promptly.

4. The fourth part discusses the importance of regular audits. Audits help to identify any weaknesses in the internal controls and provide an opportunity to improve the system. They also ensure that the organization is complying with all relevant laws and regulations.

5. The fifth part provides a summary of the key points discussed in the document. It reiterates the importance of accuracy, transparency, and regular audits in maintaining a reliable financial system.



As was stressed in the previous chapters, there has been a great deal of opposition to the delegation of legislative powers to the President even where a preliminary investigation to establish a definite set of facts had been conducted. And yet, under the anti-dumping provisions, the Secretary of the Treasury is empowered to lay and collect duties (which is definitely a legislative function) at his discretion.

As the situation now stands, the Secretary of the Treasury ascertains such facts as he desires, under such rules and regulations as "he may deem necessary," and imposes "an additional duty equal to the net amount of such bounty or grant" as he finds existing in any foreign country. And the President, under Section 338 of the Tariff Act of 1930 (Section 317 of the Tariff Act of 1922) may exclude the goods of any country which "discriminates in fact" against the trade of the United States. The former provision is applicable to any bounty, whether discriminatory or not. The latter is chiefly designed as a penalty for those nations which do not accord the same trade privileges to the United States as to other countries. In spite of the differences in the purpose of the two provisions, the Congressional delegation of authority to administer each separately is very similar. The fact that the Secretary is not bound by a preliminary

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investigation of the Tariff Commission or any other agency, signifies that Congress has awarded the Secretary of the Treasury more administrative authority over tariff policy than it has delegated to the Chief Executive.

As was noted earlier in the chapter, the decisions of the United States Customs Court have provided a restraining influence in the Secretary's actions. Nevertheless, the very existence of the wording on the statutes of the administrative powers delegated to the Secretary of the Treasury is indicative of the overlapping of administrative functions pertaining to the control of foreign trade practices.



## CHAPTER VIII

SUMMARY AND CONCLUSIONSSUMMARY

The solution of this country's several problems of international trade by jumping at first one expedient and then another, as the emergency seems to arise, has left the United States with a maze of administrative machinery and provisions, the comprehension of which few citizens can properly understand. It is not impossible to find the State Department pursuing one line, the Department of Commerce another; the Treasury Department investigating action to suppress dumping; the Tariff Commission advising the President to reduce a customs rate or increase one; and the President himself taking measures to carry out a policy diametrically opposed to the avowed program of one of the above agencies.

TARIFF COMMISSION

It is impossible to read the history of the United States Tariff Commission without a growing conviction that once responsibility had been given it to determine the "equalizing rate," the same business interests that had gone into politics to get a tariff to their liking through Congress continued in politics to get a tariff to their liking through the Tariff Commission. These in-



1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes the need for transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the statistical analysis performed.

3. The third part of the document presents the results of the study. It includes a series of tables and graphs that illustrate the findings of the research. The data shows a clear trend in the relationship between the variables studied.

4. The fourth part of the document discusses the implications of the findings. It highlights the potential applications of the research in various fields and the need for further investigation.

5. The fifth part of the document concludes the study. It summarizes the key findings and provides a final statement on the importance of the research.

terests first used pressure to have satisfactory personnel appointed, and then, perhaps without any great amount of further pressure, had left it to their representatives on the Commission to discover that the equalizing rate was an appropriate rate. Of no minor significance in this respect has been the influence exerted over the Commission by the President himself. It is true that the Tariff Commission has performed laudable work in the collection and presentation of tariff information, but it remains, in effect, a fact finding body.

#### THE PRESIDENT'S POWER

Since the days of George Washington, Congress has been delegating authority to the President to control matters affecting foreign trade. There has been a steady increase, especially since 1890, in both the scope and nature of such delegated powers. With respect to the tariff, authority was first of all delegated to the President to make new or temporary tariff rates in the form of penalty duties against goods coming from a country which was discriminating against our trade and commerce. Almost simultaneously, he was awarded the power to conclude reciprocity treaties and agreements with friendly countries for the purpose of better trade advantages. But finally, the delegation to the President in 1922 of au-

1. The first part of the paper discusses the importance of the study of the history of the United States.

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12. The twelfth part of the paper discusses the importance of the study of the history of the United States.

thority to make new customs rates; to reclassify, and, in so doing, to rewrite the tariff bill; and to change the valuation of goods coming into the United States from the foreign value to the American selling price as a basis for duty assessments, has been about the last word in the delegation of legislative authority to the President. Under the present administrative provisions of the existing tariff law, there is little which Congress might wish to do with the tariff situation which cannot now be done by the President.

#### THE FLEXIBLE TARIFF

Prior to and subsequent to the passage of the Tariff Act of 1922, it was hailed as a means whereby the tariff would once and for all be taken out of politics and made scientific. In 1922, the question was whether Congress should continue to deal with the cumbersome and time consuming process of tariff changes, or whether Congress should delegate its power under specified limitations to the United States Tariff Commission and the President. As we know, Congress chose the latter policy and the administration of the tariff was given over. It is of importance to note the composition of the recipients of that power. According to section 700 of the Revenue Act of 1916, which established the Tariff Commission, it was provided

The first of these is the fact that the majority of the population of the country is still living in poverty. This is due to a number of factors, including the fact that the country has a high birth rate, which means that the population is growing rapidly. This is a problem because the country's resources are limited, and it is difficult to provide for the needs of a growing population. Another factor is the fact that the country has a high level of unemployment. This is due to a number of factors, including the fact that the country's economy is not strong enough to provide enough jobs for the population. This is a problem because people who are unemployed are often unable to support their families, which can lead to poverty.

### THE PROBLEM OF POVERTY

The second of these factors is the fact that the country has a high level of illiteracy. This is due to a number of factors, including the fact that the country's education system is not strong enough to provide enough education for the population. This is a problem because people who are illiterate are often unable to find jobs, which can lead to poverty. Another factor is the fact that the country has a high level of disease. This is due to a number of factors, including the fact that the country's health care system is not strong enough to provide enough health care for the population. This is a problem because people who are sick are often unable to work, which can lead to poverty. The third of these factors is the fact that the country has a high level of corruption. This is due to a number of factors, including the fact that the country's government is not strong enough to provide enough services for the population. This is a problem because people who are unable to get the services they need are often unable to support their families, which can lead to poverty.



that the Commission should be composed of six members, not more than three of whom could be from the same political party. On the surface at least, the law creating the tariff commission was an attempt for an impartial commission.

An important factor to be considered, however, is the agency to whom the Commission should report the results of its investigations for tariff changes. That agency was the Chief Executive. Therefore, even though the Commission was composed of three high protection Republicans and three low protection Democrats, the balance of power would be in the hands of the Executive, who would, presumably, be ruled by his party beliefs. Thus, the arrangement provided for under the flexible provisions could not be held in any way as contributing towards the removal of the tariff from politics.

#### ADMINISTRATION OF THE COST EQUALIZATION FORMULA

Congress laid down, in 1922, what might be called an administrative yardstick for the measurement of duties. Duties were to equalize foreign and domestic costs of production. Therefore, the question arose - if the Tariff Commission is to equalize costs of production, whose costs are to be taken? Some producers are efficient, others are inefficient. If the costs of the marginal or



least efficient producer were taken, it would have meant that the tariff rate would have more than equalized the costs of all the other producers above the margin. That would have been full protection, resulting in the complete stoppage of imports. If the costs of the most efficient producer were taken, the resultant degree of protection would have been practically ineffective, since only the most efficient producer would have reaped benefits from the tariff rates.

A former member of the Tariff Commission and authority on the subject can be quoted as saying that "the application of the difference between costs as a measure of duties is usually impossible owing to the difficulty of finding what the difference amounts to."<sup>1</sup> Support for the previous statement is easily at hand from our previous analysis of the difficulty encountered by the Commission in determining the chief competing country and the chief competing market in the United States. The difficulty of estimating costs of production for by-products, the determination of satisfactory comparability between the domestic and imported products, and the determination of both foreign and domestic costs were other factors

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1. Thomas W. Page, Making the Tariff in the United States (New York: McGraw Hill Book Company, 1924) p. 83.





which complicated the efforts of the Commission in arriving at the final cost figures.

In another observation Mr. Page says "the difficulties in obtaining and verifying costs of production are infinitely greater in foreign countries than they are in the United States. Not only was there the element of national sentiment militating against the submission of costs to the agents of a foreign Commission, but also there were the difficulties of understanding the foreign language and foreign business practices."<sup>2</sup> One cannot but agree with Mr. Page, who, as a former member of the Tariff Commission, possessing practical experience in such matters, maintains "the conclusion cannot be escaped that it is rarely possible to ascertain accurately the difference in costs of production at home and abroad."<sup>3</sup>

#### FOREIGN TRADE PRACTICES

It is indeed difficult for the layman to understand how the President can more or less invade the realm of legislative prerogatives and actually levy a tax on imports. Yet, we have a very similar administrative action by the Secretary of the Treasury, which is considered by

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2. Ibid., p. 95.

3. Ibid., p. 99.





many authorities to be a greater degree of usurpation of legislative power than the Chief Executive enjoys. Both recipients of such delegation of authority have at times shown evidences of being arbitrary in exercising their discretion. In fact, what could be more arbitrary than the action of the President with the assistance of the Tariff Commission in increasing the duty on Swiss cheese without making any investigation as to the cost of such cheese in Switzerland? By concluding that he considered the higher prices of imported Swiss cheese as a "disadvantage" to domestic producers of Swiss cheese, he neglected the probability that the higher prices of Swiss made cheese might be due to a higher cost of production, and, therefore, an advantage rather than a disadvantage to American producers. Likewise, we have evidence of the arbitrary action of the Secretary of the Treasury who issued a finding of dumping on a shipment of matches from Soviet Russia, not on the basis of facts, but upon the mere judgment of a customs appraiser. Thus, this study clearly demonstrates that under the existing Congressional policy of delegating legislative powers to the Executive and other administrative branches of the government, more restriction should be placed upon the arbitrary administrative decisions of one man or a small group of men, which ultimately leaves effects upon the economy



as a whole.

### CONCLUSIONS

As indicated by this study, we have confined ourselves to the change that has taken place in United States Tariff Policy. The reversal in this particular field has occurred through the gradual development of administrative powers in the possession of government officials and committees. There are listed in the following pages a few sincere methods of possibly checking the trend toward more administrative regulation in our tariff policy.

### A MORE DEMOCRATIC PROCEDURE

As long as we, the people, accept "protection" as a principle of national policy, as long as we accept "private enterprise" as another principle and "representative government" as still another, and as long as human nature in its pursuit of gain is what it is, private enterprise will endeavor to shape the tariff in its own interest, and to this end will endeavor to control that branch of government which has the rate making power. This will be true also should the United States ever go over to a free trade or lower tariff policy.

For the visible future at least, I can foresee that we shall continue to have a protective tariff, and rates, whether fixed by Congress, a Commission, or the President,

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for a systematic approach to data collection and the importance of using reliable sources of information.

3. The third part of the document describes the process of identifying and addressing potential risks and challenges. It stresses the importance of proactive risk management and the need to develop effective strategies to mitigate potential threats.

4. The fourth part of the document discusses the role of communication and collaboration in achieving the organization's goals. It emphasizes the importance of clear communication and effective teamwork in ensuring the success of all projects and initiatives.

5. The fifth part of the document provides a summary of the key findings and conclusions of the study. It highlights the main points discussed throughout the document and provides a final assessment of the organization's current state and future prospects.



will, in fact, be determined by concession and compromise or some other more questionable methods. All that I contend is that since the tariff is bound to be a resultant of conflicting pressures, all persons who are burdened by it, as well as all who are benefited, know where their interest lies and will exert pressure accordingly.

In reference to this, this study has attempted to show that decisions of the members were unanimous in the many factual and informational studies made by the Commission. But it has also shown that in its investigations of costs of production, decisions were more likely to be divided, and, what is even more significant, that the division followed a sharp line of cleavage; the Commissioners with protectionist leanings so handling the data as to warrant a higher rate; whereas the low tariff advocates were interpreting the statistics towards justification of low rates.

It has also manifested that investigations by the Commission have been slow and expensive, and have failed to make the tariff speedily adaptable to changing competitive conditions.

Up to 1922, the special interests have had only one body to manipulate in shaping a tariff to their liking, namely, Congress. Since that date they have had three:

1. The first part of the paper discusses the importance of understanding the underlying mechanisms of the observed phenomena. This section provides a comprehensive overview of the current state of research in this field, highlighting key findings and identifying areas for further investigation.

2. The second part of the paper focuses on the development of a new theoretical framework that integrates the various concepts and models discussed in the literature. This framework is designed to provide a more unified and coherent understanding of the complex interactions involved in the process.

3. The third part of the paper presents the results of a series of experiments conducted to test the predictions of the new framework. These experiments were carefully designed to isolate the variables of interest and to measure the effects of different conditions on the outcome.

4. The fourth part of the paper discusses the implications of the experimental results for the broader field of research. It highlights the strengths and limitations of the new framework and suggests potential applications of the findings in other contexts.

5. Finally, the paper concludes with a summary of the main findings and a discussion of the future directions of research in this area. It emphasizes the need for continued collaboration and communication between researchers in this field to advance our understanding of the underlying mechanisms.

Congress, the Tariff Commission, and the President. With the President possessing the power of changing the personnel of the Commission, tariff rates may be counted on to rise, if he is a protectionist, and to fall, if he is a free trader - and this in spite of the apparently scientific provisions that the duty must equal the differences in costs.

Thus, the members of the Tariff Commission must be above suspicion in their principal duty of assembling and presenting facts. Whatever the political and economic views of the Commissioners and whatever their professional connections, the thing of paramount importance is that they should all be men of the highest calibre and men nationally recognized as of the highest ability in their field. How to get such men is a problem which is not easily solved under our present political conditions. The solution depends on the appointing power, and considering the pressures which are brought to bear on that power, we can only hope for the appointment of superior individuals, which will form a Commission approaching the ideal.

As to whether the final naming of the rate should be lodged with the Tariff Commission, the President, or with Congress, I favor the submission to Congress of the Commission's reports with the actual naming of the rates reserved to Congress as the Constitution intended. The



present arrangement places too many arbitrary powers in the hands of one man.

It is true that if the naming of tariff rates were fully returned to Congress, the tariff would continue to be the resultant of conflicting interests in the future as it has been in the past. Such a solution will be objected to on the grounds of being no solution at all. Nevertheless, it is the nearest thing to a democratic solution of the problem. The people's representatives will determine rates based upon accurate and official information as to who receives the benefit and who bears the burden, as to how great is the benefit and how great the burden. The principles of representative democracy are realized to a greater degree in the orderly debate and resultant decisions of three hundred men than in the arbitrary decision of one man.

#### THE FAILURE OF A PLAN

I have tried to point out in this study how the "cost equalization formula" failed in its purpose, leaving in its wake a maze of administrative machinery. In instructing the Tariff Commission to equalize costs of production, section 336 of the Tariff Act of 1930 enumerated certain factors such as wages, costs of materials;





transportation costs, and other advantages or disadvantages which may be taken into account. It leaves great discretion to the Commission as to methods of collecting data and of handling them when collected. It may take a single year or the average of several years as a basis in making its cost studies. It may devise its own formula for handling joint costs. In the case of agricultural costs it may impute such values as it sees fit as wages to the farmer and his family, or as prices, to the materials produced and consumed on the farm. As it is seldom possible to get returns from all business concerns engaged in an industry, the Commission has had to use its own judgment in sampling. In order to get the equalizing costs from the many costs collected, it may use the simple average, the weighted average of invoice prices or wholesale prices, or the marginal cost. The fact that so much option is left to the Commission in its method of determining the "equalizing rate" indicates that the body is really performing a legislative act rather than an administrative one.

The present administrative tariff set up, with its provisions for a cost equalization tariff, or a reciprocity tariff - the one promoting tariff increases, and the other aimed at tariff decreases - is sweeping and paradoxical in its scope. The latter is from the point



of view of constitutional law, sound in principle. Under the Reciprocal Trade Agreements which were enacted as an amendment to the Tariff Act of 1930, the President is given authority to alter rates upon the basis of certain facts - definitely and easily ascertainable - i.e., upon the establishment of specific tariff reductions by neighboring countries. But the former provision (for cost equalization), regardless of what the Court may have decided in the Hampton Case, involves endless speculation and the handling of much controversial data. Even the late Chief Justice Taft, who gave the Court's opinion in the Hampton Case, admitted as much. Likewise, the administrative problems encountered by the Tariff Commission (as outlined in Chapter V) in trying to determine cost equalizations, bear more abundant and indisputable evidence of this fact. It, therefore, seems obvious that if the current reciprocity policy is not renewed in 1948, some other plan than one as vague as equalization of cost differences should be set up.

#### NEED FOR ADMINISTRATIVE COORDINATION

We have deliberately indicated that the Secretary of the Treasury in issuing anti-dumping orders is not assisted by a preliminary thorough investigation such as the President enjoys through the medium of the Tariff Commission. The background of this continued possession

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part outlines the various methods and tools used to collect and analyze data. It mentions the use of surveys, interviews, and focus groups to gather information from stakeholders. Additionally, it discusses the application of statistical software to process and interpret the collected data.

3. The third part describes the results of the data analysis. It highlights the key findings and trends observed, such as the increasing demand for certain services and the declining interest in others. These findings are presented in a clear and concise manner, supported by relevant charts and graphs.

4. The fourth part provides a detailed analysis of the factors influencing the observed trends. It explores the internal and external factors that may have contributed to the changes in behavior and preferences. This analysis helps to identify the underlying causes and provides insights into the organization's strengths and weaknesses.

5. The fifth part discusses the implications of the findings for the organization's future strategy. It suggests ways in which the organization can leverage its strengths and address its weaknesses to better meet the needs of its stakeholders. It also identifies potential risks and opportunities that may arise from the changing market conditions.

6. The sixth part concludes the document by summarizing the key points and reiterating the importance of ongoing monitoring and evaluation. It emphasizes that the organization must remain flexible and responsive to changes in the market and stakeholder expectations to ensure long-term success.



of such arbitrary power on the Secretary if somewhat puzzling. One may rightly ask why the anti-dumping provisions of the Emergency Tariff Act were not revised, and definitely incorporated with the administrative sections of the Tariff Act of 1922. Instead, the provisions remained unaltered in both the 1922 and 1930 acts. The only possible explanation is that the battle in Congress turned on the flexible section 315 (Tariff Act of 1922), and section 336 (Tariff Act of 1930). There has been no indication from the Tariff Commission's practices, as recorded in the annual reports, that section 316 (Tariff Act of 1922), and section 337 of the more recent act were intended as anti-dumping measures. Nevertheless, the fact remains that the President is authorized to suppress almost anything which might appear to him to be opposed to the best interest of such domestic manufacturers as are, in his opinion, efficiently operated.

If the President's control of the tariff is to be continued, and it seems likely that it is, what is definitely needed is the coordination of administrative provisions. There is no logical reason why the anti-dumping provisions in the present tariff law (section 303 - Tariff Act of 1930) should not become an integral part of the general flexible tariff plan.



On the other hand, if the anti-dumping provisions are to remain subject to the arbitrary action of the Secretary of the Treasury, it would be consistent with the generally accepted practices of administrative procedure if the observance of some reasonable form of notice or hearing were required. Even though the Customs Court has asserted its authority over the findings of the Secretary in two particular cases, the action of the Court may come too late to avert serious damage.

#### COMPREHENSIVE ABSTRACT

The general conclusion to be deduced from this treatise is that the tariff policy pursued by the United States since the termination of World WAR I and until the adoption of the Reciprocal Trade Agreements Act in 1934 has resulted in a greater degree of administrative control and accompanying problems in our tariff policy. The growth of the present day administered tariff policy has been due to a variety of factors.

According to Section 315 of the Tariff Act of 1922, Congress put into operation customs rates which would equalize the difference between foreign and domestic production costs. It is an elementary fact that international trade flourishes primarily as a result of these cost differences. The rigid application of Section 315

1. The first part of the paper discusses the importance of understanding the underlying mechanisms of the observed phenomena. It highlights the need for a comprehensive approach that integrates various disciplines to achieve a deeper understanding of the complex systems involved.

2. The second part of the paper focuses on the development of a robust theoretical framework. This involves identifying the key variables and their interactions, and formulating hypotheses that can be tested through empirical research.

3. The third part of the paper presents the results of the empirical studies conducted to validate the theoretical framework. It includes a detailed analysis of the data collected, showing how the observed patterns align with the predictions of the model.

4. The final part of the paper discusses the implications of the findings for future research and practical applications. It emphasizes the need for continued exploration and refinement of the theoretical model to address the remaining challenges in the field.

The research presented in this paper contributes to the existing body of knowledge by providing a systematic and rigorous analysis of the phenomena under investigation. The findings suggest that the proposed theoretical framework is a promising tool for understanding and predicting the behavior of complex systems. However, further research is needed to explore the limitations of the current model and to develop more sophisticated methods for data analysis and model validation.

In conclusion, the paper underscores the importance of interdisciplinary collaboration and the integration of theory and practice in advancing our understanding of complex systems. By continuing to refine and expand the theoretical framework, researchers can make significant contributions to the field and address the pressing challenges of the future.

which the President was authorized to enforce could practically terminate the foreign trade of the United States. At least it could stop the importation of all goods except those on the free list.

While there is still widespread opinion that a delegation of legislative authority is contrary to our established constitutional principles, the courts have gradually built up the theory that the President is acting administratively so long as he is carrying out the prescribed wishes of Congress. According to this theory the law is passed when Congress delegates the authority. It merely remains in repose until the President, in the future, discovers a named contingency, at which time he puts the law into force. Under such a theory, Congress delegated to the President the authority to establish cost equalization tariffs. This cost equalization is to be enforced not only by the administrative manipulation of tariff rates, but also by changing the place of valuation and by changing classifications.

But the President's power in tariff matters is not limited to what is delegated by Congress. If we consider his political role, he may even be the creator of the general policy of the Congress. As the head of the party in power, the principal dispenser of political patronage, the one leader representing the country as a whole, he





is often in a position to shape the government's program and to force it through the legislature.

For an example of the President's dominant role in the confusion of tariff making, one need not look beyond the circumstances surrounding the adoption of the so called flexible tariff. In 1922 the plan was introduced with the backing of President Harding, after the Hardney bill had reached the Senate. Again in 1930 the plan, backed by President Hoover, easily passed the House, but encountered stiff opposition and initial defeat in the Senate. Its final readoption was unquestionably due to pressure from the White House.

To say that adjusting tariff rates to the cost equalization formula is making a scientific tariff is to presume that the application of such a formula is practicable and devoid of administrative problems. Even if we omit a number of distinct meanings which "cost of production" may suggest to economists, and confine ourselves to money costs, or the other expenses of production, we are still without the definite standard of measurement required by the scientist. Indeed, there are so many speculative elements involved as to render the prescribed standard very elastic and largely dependent upon the interpretations of its administrators. Such interpretations are reflections of policy. The cost

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investigator is inclined to vary his emphasis according to the desired results. However conscientious he may be, he ultimately finds himself in the realm of speculation; and in this realm he may subconsciously give way to prejudices. Two experts, or two groups of experts, might be sent out to ascertain, independently of each other, costs of the same articles; and the chances are they would return with widely varying results. This could happen without any unprofessional conduct on the part of either group. The very fact that all cost elements involved are constantly fluctuating makes the ascertainment of any conclusive figure a matter of some arbitrariness.

Unless the Tariff Commission, in making its investigations as to costs, demonstrates that the desired information can be definitely and conclusively ascertained, the idea of a scientific tariff based on the cost equalization policy fails. And according to the doctrine of the separation of powers expounded by the Supreme Court<sup>4</sup> in the case of *Field v. Clark* Congress may delegate its taxing power to the President only when the realm of executive action is precisely stated and the facts upon which he is to base his action may be certainly ascertained. Upon the same principle, Congress gave the

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4. See Chapter IV, section on Delegation of Legislative Authority.





President authority to alter the tariff rates and to equalize the production costs. And the Supreme Court put the stamp of approval upon this delegation of authority, thereby proclaiming that it is within the President's power legally to definitely ascertain both foreign and domestic costs. If, therefore, the Commission finds that in practice such facts cannot be conclusively ascertained, then not only does the conception of a scientific tariff based on such a policy fail, but the Court's theory also breaks down. If it does not coincide with the facts, it becomes a mere legal fiction.

Regardless of the legal fiction involved, some change in the administration policy of our tariff policy is necessary. The situation which has existed in the Tariff Commission since the adoption of the flexible plan has been anything but satisfactory. Even the reorganization in 1930 had little effect upon the actual situation. The tendency has been to blame the personnel of the Commission for matters which were not within its power to control. While some of its members may not have been of the highest calibre, the trouble has existed in some measure when its membership was of the best. At the bottom of the trouble lies this elastic yardstick - the cost of production formula - about which there have been numerous honest opinions and varied problems. The use



of such an elastic standard encourages rather than discourages political speculation in tariff matters.



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